From: [redacted]
Sent: 08 March 2021 18:30
To: [redacted]@gov.scot>
Subject: Private- transcript

Hi [redacted]

As discussed, please see attached transcript of the discussion between Mr Hamilton and the First Minister. This has been edited from the verbatim transcript to remove information that might be problematic from a legal perspective, as discussed.

Happy to discuss.

Best wishes,

[redacted]

Interview with the First Minister, 1/2/2021

Attendees

James Hamilton, Independent Advisor under the Ministerial Code
Nicola Sturgeon, First Minister
[redacted] Secretariat to the Independent Advisor under the Ministerial Code

Meeting transcript

JH: Thank you for agreeing to participate in this interview. As you know, I am conducting an investigation into the First Minister's self-referral under the Ministerial code concerning meetings between the First Minister and Alex Salmond in 2018.

Thank you for the written statement you have provided. I have used the information in this, and other statements I have received, to develop a list of further questions I would like to discuss with you.

[redacted], who provides secretariat support to the investigation, will also be present during the interview to take notes and to provide practical and technical support if required.

The meeting will also be recorded, so that a transcript of the conversation can be produced. This will be shared with you as a record of the discussion, and once the transcript is agreed the recording will be destroyed.

In producing my report, I may find that I need to refer to the information you provide. I will be taking appropriate action to ensure that my report is compliant with any relevant court order.

Do you have any questions about the process, or how the information you provide will be used?

In that case, let us turn to the main part of the discussion.

NS: No, the only thing I would have drawn attention to you have already alluded to that clearly there are court orders in force here that limit the ability to freely publish or talk openly about some aspects of this, but I know you are fully aware of that and I will not let that inhibit anything I say to you, and leave it to your judgement as to what can be quoted and what can't.

JH: Yes, well what I will be doing in practice is running it past a Scottish counsel to ensure that, because obviously somebody who is familiar with the legal system in Scotland needs to look at it, so that's my intention.

[redacted]

[redacted]

JH: [redacted]

NS: [redacted]

JH: Yes, it was mentioned to me that there had been a change in the briefing which had been given to Ministers which might have been significant, and in a recent statement to me mentioned how there were jungle drums in the media about Alex Salmond. That's the way it was put. I think you also said yourself that you had a lingering concern about Alex Salmond dating back to the November period, but no more than that.

NS: No more than that, but it was a lingering concern. Round about the beginning of November 2017, just to put you in the picture as you will recall this was, at the time the whole world really was talking about the "me too", allegations, and you know organisations, governments, parliaments everywhere were trying to make sure they had the right processes in place. And this was round about the time we got a query

from Sky News, by "we" I mean the SNP not the Scottish Government, and that was about allegations that had been made by people at Edinburgh airport about conduct on the part of Alex Salmond.

At that point I spoke to Mr Salmond about it, you know as far as I was aware at that point we were about to see a story appear on Sky News. I spoke to him the morning after we got the press query, he seemed pretty shaken by it at that point and said he had to get to the bottom of what it was. I spoke to him again later that day when he appeared much more bullish. But the following day the Permanent Secretary had indicated to me that he had been, or his lawyers, or a bit of both, I'm not sure, had been contacting people in the Scottish Government effectively asking people that he had worked with or that might have been with him going through Edinburgh Airport to back him up and that that has caused a bit of, some disquiet on the part of those people who had been contacted. And she asked me to ask him to stop that, which I did, and he said he already had all the information he needed.

So I suppose the two things that just left me with a lingering concern was the fact that- and I struggle really to go beyond what I'm about to say to you- that his contacting people in the Scottish Government had appeared to almost stir something, a hornets nest had been stirred kind of thing. That was the impression I got. And then he said something to me about you know, you can't have stories like this running because you get one and the flood gates will open kind of thing, which he immediately qualified and said "oh no, that's not to say that I think there is anything there. But it was just the combination of things left me with a "is there something that is about to come forward about Mr Salmond's behaviour?" It wasn't something I thought about every day, or worried me everyday, but it was there in the back of my mind, and that I suppose is the back drop to what unfolded at a later stage.

JH: And then on the 29th of March, Mr Aberdein was in the office, I think there was some kind of party or somebody was having a birthday or something of that sort. [redacted]

NS: From my memory of this, and my recollection of this, I've tried very hard to get as clear a recollection, it is not the clearest recollection because the 29th of March, for you know reasons we may come on to, has never really been a significant event in my mind. [redacted] Geoff I think more recently had made contact to ask if I would agree to see Alec, there was an issue Alec wanted to talk to me about, he was in a state of great distress. [redacted] ne of our colleagues, it was her 60th birthday, somebody that Geoff had worked closely with and I think it was he might be in, he was going to try to make it in for the birthday cake celebration and if so he might try to grab a word with me. And that is what happened.

JH: and then was he brought into your office? Was this just a discussion in the corridor so to speak?

FN: No no, we had been outside, just I don't expect you to visualise my office in Parliament but there is you know outside my office is where civil servants, special advisors work, so the member of staff whose birthday it was, civil servant, incidentally, we were outside there doing the birthday cake, singing happy birthday and Geoff had asked for a word and we went in to my office. Again, just to be clear, that would not have been the first time since Geoff had left as Chief of Staff, after I became First Minister that he had been in the office for something and had stepped in to my room for a chat. We were friends, you know, we are friends. And so he stepped into my room. From memory, I don't think was a particularly long conversation but it took place in my office.

JH: And did he give you any details at that stage about what it was about?

NS: Not, and this is where, so a combination of what I remember about this meeting and then what actually happened at my house on the 2nd April which we will come on to, make me very firm to the best of my recollection. Remember, this 29th of March meeting had never been a significant event in my mind. To the best of my recollection no he did not give me details, it was very much he wanted to get me to agree to see Alec. Alec and I were very close but we hadn't been speaking as much as normal, you know I was First Minister, he was off doing other things, he had lost his seat. He wanted me to see Alec and agree to a meeting. He was telling me that he was very worried about Alec, a lot of the discussion was about Alec's state of mind. You know he seemed to be indicating that he had never heard Alec be quite so upset about anything previously, that he was very distressed, that he thought he might be about to resign his SNP membership because of the nature of the issue he was upset about. I do believe that I, partly down to what he was telling me, partly down to the Sky lingering concerns, that it was in the realms of a potential concern or complaint about sexual misconduct. But, you know in my mind, and this was not unusual; Alec and I have worked incredibly closely for a long time, if I was being told he wanted to tell me something, in my mind I would have had to see him and hear what he wanted to tell me. That's basically, I had a general sense that it was something serious, something in the realms of a sexual complaint potentially, and he was very upset about it [redacted] ut I was very clear, I was agreeing to see Alec as a friend, I was being told he was in a state of considerable distress, but also as the leader of the SNP, I was being led to believe he was on verge of resigning his membership of the party.

JH: and you've described how he told you what the complaints were about? That you were shocked at that meeting, but you hadn't know the details before that?

NS: I didn't know. I suspected it was some kind of complaint about sexual misconduct, but the nature and the detail of that, and I can take you through. I should be candid with you..

JH: No I don't want to know and I don't need to know I don't think because.

NS: No, not the detail of the complaints but how, I was going to be candid with you, I have read Mr Salmond's submission to you, because it had been widely report, and published on the Internet, and his sort of suggestion that he turned up at my house

on the 2nd of April and everybody knew exactly what we were about to discuss neither aligns with what he said previously, nor in my view with what actually unfolded in my house, which not the detail but you know the generality of that I'm happy to go in to as much detail as you want.

JH: And at that meeting, I think he asked you to intervene in relation to the matter, in relation to the internal complaints which were being dealt with?

NS: Well, firstly he showed me, so he, when he arrived at my house he first of all asked to see me privately away from the others, which again..

JH: which you did?

NS: Which we did. Again, he's saying we all knew exactly what it was about. He asked to see me privately and as he was telling me what the nature of this was, I didn't know this at the time but I found out shortly later that Geoff and the other individual there was taking Liz through the same detail. He showed me the letter that he had received from the Permanent Secretary, asked me to read it. I was deeply profoundly shocked by what I read, and he then he gave me his account, and I'm not going to get into detail but his account of it, and you know he denied part of what was alleged, but his account shocked me too, because in my view it was an account of something that was deeply inappropriate and it shocked me deeply at the time. And you know I will remember that sense of shock for a long time.

JH: And you've said in your statement that it was clear to him at the end of the discussion you had that you were not going to intervene as he requested you to?

NS: I absolutely hope it was clear, it was certainly clear in my mind I was not going to intervene. I would ask you, I suppose, to remember this, I was sitting here with somebody, just to be clear, that has been closer to me for all my adult life than anybody other than my parents. He was very agitated and upset. I was, I felt angry, based on what I had been told, but I was also feeling upset and sympathy for him. But yeah, I was clear in my own mind, and I hope I was clear was him I was not going to intervene in what was a process that I was not even meant to know about at that stage, let alone have any involvement in.

JH: I think that from his own statement there's quite an agreement between the two of you actually as to what was discussed, and his anger seems to be directed actually at the fact that you wouldn't intervene with anything else, as I understand it. Obviously his interpretation differs from yours, but that's the way I read it. With hindsight, do you think it would have been wiser for you, having made it clear you were not going to intervene, not to have further meetings and telephone conversations with him?

NS: With hindsight, Mr Hamilton, I wish I had never had any discussion with him about it because it has caused me nothing but pain and grief and you know difficulty. But I didn't intend, after that meeting, to have any further discussions with him about it. He then contacted me again, asked me to inform the Permanent, and again, this is somebody who is very close to me, he called me, asked to speak to me. Always at the back of my mind was the view that or the belief that at any point - Alec is somebody that likes to take control of situations and it was always at the back of my

mind that at any moment he might decide to go public on this, and proclaim his innocence, and say he was fighting to clear his name. And when he was trying to speak to me that was always “is that what he is going to tell me?” So when he contacted me again, it turned out it wasn’t what he was going to tell me, and he wanted me to tell the Permanent Secretary I knew and ask her to accede to his request at that time for a process of mediation, and I told him flatly I wouldn’t do that. And you know he wasn’t, he didn’t take that particularly well. I then, later, when he next contacted me that was the point at which it was very clear the he was not just talking about taking legal action against the Government in sort of theoretical terms but was very seriously considering that. That was the point at which I decided, notwithstanding my reasons for not telling anyone in government up to that point, which again I’m happy to go through, at that point I had to tell the Permanent Secretary that that was what I was saying to him.

JH: You’ve explained in your written statement, and I can understand what you are saying there. I mean, was your main reason for seeking him and speaking to him on the telephone on those other occasions, you mentioned at one stage, being afraid of being blindsided and worried that he might do something, resign or whatever? Was that the sole motivation?

NS: Yes, I mean I …

JH: He seems to be suggesting that you did give him some kind of reason to think that you were thinking about mediation or you know considering his requests et cetera?

NS: So there was, sorry, I interrupted you. I will come on to a point where he seemed to think that I was expressing a view within Government at that point about arbitration. But my motivation, yes, was I have had a residual, you know, he was a friend, colleague, very close to me, he was, and I’m a human being, I guess there was a residual sort of sense of not wanting a complete breakdown in our relationship.

JH: Sure.

NS: But the main motivation was as party leader. I had never any intention of intervening as First Minister, I would not have done that, and I think as you say he is, that’s why he is so angry at me I think because I didn’t do that. But my motivation for speaking to him on the 7th of June, which was after I told the Permanent Secretary, we were about to have a party conference and I thought he might be trying to corner me informally, so I decided to tell him that I told the Permanent Secretary and again reiterate I wasn’t going to intervene. After that, yes, it was “was he going to do something public?” that might lead to the whole thing going public. At the last meeting I had with him, in mid-July, he at that point said to me he believed that was the government, he was seeking a process of arbitration. He had started on mediation and gone on to arbitration. And he had formed a belief, which to this day I don’t understand how, whether he was just saying this to try to prompt me to get involved or whether it had come from somewhere, but he had formed a belief that I was the one blocking agreement to arbitration, and that was just not the case. I was not expressing any view because I wasn’t involved in the decision making. I told the

Permanent Secretary that he has that belief because I didn't want any misapprehension that I was trying to influence something that I didn't have involvement in. And then I spoke to him for the last time, a few days after that, on the telephone where I was trying to be very clear with him that I didn't think this arbitration- not because I had any involvement in it, because all along my view was, rightly or wrongly, whatever he was contesting about the allegations made against him he was, to me, conceding something very serious and I thought he should engage with the substance not just try to find a procedural way of making it all go away and that's what I was trying to communicate to him, I think, on the, in the last phone call.

JH: But he seems to have taken the view that this was a trick to try and get him into a process that would undermine his judicial review proceeding.

NS: I mean, I read that in the submission to you and what he had, he gives the impression that that was the first time I said that to him and that this was somehow something that the Permanent Secretary and I had cooked up, and it is just nonsense, and what he omits to say is that I had expressed this view to him, to the extent that I was giving him any sort of opinion on this, that- this was not a situation where he was saying this is all just a pack of nonsense and there's no truth in any of this, he was admitting to me something that was in my view deeply inappropriate and a gross abuse of his power as First Minister, and I thought he should engage with the substance of it. The mediation, the arbitration, you know, he will talk about and you know his lawyers obviously were telling him that they thought the process was legally flawed, but these were devices for him to try and make the whole thing go away. And my view is that is not what he should have been doing.

JH: Do I understand that when he talked about arbitration and mediation, he was talking about arbitration of the process of his challenge and judicial review, or was he talking about arbitrating the substance of the complaints against him.

NS: I'm not 100% clear on that, so originally he wanted, and one of the earlier calls, the first phone call I had with him after the first meeting he wanted me to ask the Permanent Secretary to agree to a process of mediation with the ..

JH: which would have involved him and the…

NS: The complainants, presumably.

JH: Yeah.

NS: Now, I don't know…

JH: because subsequently his solicitors wrote a letter saying they had never looked for this, that they were talking you know about arbitrating the way in which his complaints about the process would be dealt with.

NS: My, I've not seen all of the legal correspondence, obviously, so my understanding, and this is only my understanding, that initially his lawyers were seeking a process of mediation between him and the complainers. And then, at a

later stage, presumably after this had been rejected, it became a process of arbitration of the process, the concerns about the, what he would have described as the illegalities and the flaws in the process, and that's what arbitration was.

JH: Yes.

NS: But to some extent my answers on this to you are conjecture as I have not- apart from the messages he sent me- I have not seen all of the legal correspondence.

JH: Sure. I haven't seen it either but I have been given a certain amount of it. Can I ask you a question that isn't addressed anywhere. What would have been the political consequences of either you, or indeed the Permanent Secretary, deciding to abandon the procedure and agree to some other process to deal with this?

NS: I think I would be sitting here having this conversation with you but instead of the breaches of the Code that I'm accused of, I would be being accused of intervening, using my relationship with him to interfere in a process that I had no role in and making complaints go away because of who he was and what his connections were. And I think the political ramifications of that, had it unfolded that way, would have been just as big if not bigger and in my view much more legitimate criticism would be getting levelled at me than is the case right now.

JH: I must say, it also occurs to me that any civil servant who decided, who took it upon themselves to settle the action at that point..

NS: yeah

J: … without allowing it to go to a court would find a lot of difficulty in defending that position, although it was ultimately settled but in a different way. That I think is a consideration. I just wanted to direct you to some of the things that are in Mr Salmond's own statement, yeah, I actually think you've dealt with pretty much all of these things that I'm looking at here. I any event, as I said, I don't think there is really much disagreement that the substance of the discussions you had with him was all about the complaints that he had about the Scottish Government procedure, and trying to set up some kind of arbitration or mediation to deal with it, and not about anything else, but I don't think there's any dispute about that. That I think really covers the things I wanted to ask you about. I don't know if there is anything else that you want to mention or emphasise?

NS: I think on the Ministerial Code aspects, I mean you said earlier on but just to check that you think I have covered enough in my statement as to why I didn't report my contacts with him through the Code? And..

JH: Yes, I understand the difficulty you would have had in notifying the matter in the way that, well, I must say that it is something that I have to look at, as to whether in fact the Code does cover a meeting in those circumstances…

NS: Yeah,

JH: but which is another matter, but even assuming it did, I can understand the difficulty, the dilemma you faced in. That was partly why I asked you whether it would have been wiser, having had the first meeting, not to have had any further ones because I think that dilemma wouldn't really have existed had there been one meeting where you wouldn't have anticipated exactly what was going to happen.

NS: No, I can appreciate that, which is why I tried to set out clearly the reason for the further contacts.

JH: Yeah.

NS: The next phone call he called me, the next meeting was very much to be clear ahead of us potentially being together for two days at a conference that I was not going to intervene. And then after that it was just about trying to make sure that I wasn't about to be blindsided. All of my interactions, as far as I am concerned, were in my role as party leader, and you know, I never – I felt I discharged my role as First Minister by being clear, and in practice that I was not doing anything to try to influence a process that it would have been deeply inappropriate for me to have done.

JH: Well, under the process that had been agreed that was the procedure, you weren't involved in it, as had been agreed. Okay, well thank you for that.

NS: Thanks.

JH: I don't think there is anything else that I need to ask you at this stage.

NS: Okay, well thank you for that. I appreciate obviously you are taking this on, these are not easy things for anybody to be involved in, I appreciate.

JH: I certainly didn't anticipate any of this when I was originally asked by Alex Salmond to take it on.

NS: No, I imagine that you wouldn't have thought this. Look, I suppose the last point from me is, and I don't know how closely you follow Scottish politics, Mr Salmond is, and it's a matter of great personal, you know, grief to me, he's on a bit of a revenge mission right now. But I suppose my question is, and feel free to tell me you can't answer this, do you have any sense of your timescale for concluding?

JH: I'm near the end of the procedure. Fortunately from my point of view, there are quite a limited number of witnesses to the key events that are my concern, and I've got fairly detailed statements from everybody. I may have one or two more interviews to conduct, and then it's a matter, I think, at that stage of writing, and finishing off a report. I'm conscious that you have an election coming up in May, and so I'm trying to get it done as quickly as I can, essentially, but I don't really want to put a time on it because until you actually get into the process of writing, its sometimes not easy to anticipate exactly how long it is going to take. But I am conscious I don't want it to run up anywhere close to an election…

NS: Yep.

JH: … which I think is not fair for anybody.

NS: Thanks. Well, suffice to say, when you finish the process of interviews, if there are any other matters you want clarification on or further information…

JH: It's always possible that something will be raised that I may want to come back to people on. But in fact because I have received very full accounts from all of the people concerned, I think, and it's for me to work out where the contradictions are and how I resolve that, but broadly speaking I've had very good co-operation and a lot of information, so I don't really anticipate it is likely I am going to have to go back to people, I hope not anyway.

NS: Well, I am at your service.

JH: If something unexpected comes out at this stage.

NS: Okay. Great, well I really appreciate your time.

JH: Thanks First Minister. Thank you.

NS: Thank you.

From: Rogers D (David) (Constitution and Cabinet Director)
Sent: 08 March 2021 16:54
To: McAllister JM (Jackie) <Jackie.Mcallister2@gov.scot>
Subject: FW: Ministerial Code Advisor- Indemnity
Sensitivity: Private

David Rogers
Director, Constitution and Cabinet | The Scottish Government | 4 N.04, St Andrew's House, Edinburgh, EH1 3DG | T: [redacted] | E: david.rogers@gov.scot

From: Wright AG (Aileen) <Aileen.Wright@gov.scot>
Sent: 08 March 2021 16:12
To: [redacted]@gov.scot>; [redacted]
<[redacted]@gov.scot>
Cc: [redacted]@gov.scot>
Subject: RE: Ministerial Code Advisor- Indemnity

[redacted]

My team has the Committee liaison role for the Finance Committee and a role in the proposed annual reporting process because of the central review of contingent liabilities linked to the annual accounts. We wouldn't expect to be involved in every engagement with the Committee on individual guarantees etc. though.

I did confer briefly with [redacted] on this at Jackie's request and agree with the position reached that in terms of the Scottish Public Finance Manual (SPFM) there should, on balance, be a notification. As [redacted] will have said, there is a procedure when the Committee has to be consulted but there isn't a process as such for notifying the Committee. The SPFM doesn't cover this but a reasonable assumption might be that this should be done "as and when". The current Written Agreement between the Scottish Government and the Finance committee (extract below) fits with that (the next version will include the annual reporting mentioned.)

[redacted] has highlighted the proposed annual report to the Committee but the timing of this is not agreed, so there could be a risk of adverse comment if the notification was perceived as "late". My own view, therefore, would be that the notification could be made quite simply in a note from the Minister to the Convener, explaining the indemnity, referencing the SPFM, the quantification and the assessment of likelihood. This could be a private note, referencing the sensitivity, if that was preferred.

Aileen

gov.scot

Aileen Wright
Deputy Director
Financial Management Directorate
M: [redacted]

Scottish Government
Victoria Quay
Edinburgh EH6 6QQ

Contingent liabilities

1. FIAG recommended that the authority of the Parliament is required before the Scottish Government can grant a guarantee or indemnity which would, in effect, bind the Parliament into providing the expenditure in the event of the guarantee or indemnity maturing. This does not apply to a guarantee or indemnity which is granted under a statutory requirement to do so or is of a standard type and arises as an unavoidable feature of an activity authorised by statute.

2. The Scottish Government undertake to notify the Finance and Constitution Committee of all contingent liabilities between £300,000 and £2.5 million. The Committee will then have the opportunity to decide what action if any it wishes to take on the Contingent Liability.

3. The Scottish Government undertake, before granting any guarantees or indemnities in excess of £2.5 million (including those without limit), to submit their proposals to the Finance and Constitution Committee. The Scottish Government agrees to provide the Committee with as early notice of the contingent liability as practically possible so as to allow sufficient time for effective scrutiny.

4. The Committee agrees to consider each contingent liability in excess of £2.5 million at the earliest opportunity and may take evidence from the appropriate Minister before deciding whether to approve the proposal or to propose an amendment or recommend that the proposal is rejected. If the Scottish Government does not agree with the Committee's recommendation then the Committee following further information from the Scottish Government may either allow the Scottish Government to proceed or refer the matter to the Parliamentary Bureau for consideration. It will then be for the Parliament to agree whether or not to allow the Scottish Government to proceed.

5. Where the Scottish Government requests that a contingent liability should be considered by the Committee in private session it will provide a full explanation for the reasons for this request when submitting its proposal. In doing so the Scottish Government recognises that the Committee will only agree to take evidence in private in exceptional circumstances.

6. Where there is agreement to consider a contingent liability in private both the Finance Committee and the Scottish Government agree not to make public any of

the details discussed during the private session. The Scottish Government will also agree with the Finance and Constitution Committee what information can be made public in relation to the contingent liability itself.

From: [redacted]@gov.scot>
Sent: 06 March 2021 16:10
To: [redacted]@gov.scot>; Wright AG (Aileen) <Aileen.Wright@gov.scot>
Cc: [redacted]@gov.scot>
Subject: RE: Ministerial Code Advisor- Indemnity

Hi Aileen,

Sorry to nag about this, but I wondered if you would be able to look at this on Monday? I'm keen to try and get this resolved over the course of the week.

Happy to discuss.

Best wishes,

[redacted]

From: [redacted]@gov.scot>
Sent: 04 March 2021 12:18
To: Wright AG (Aileen) <Aileen.Wright@gov.scot>
Cc: [redacted]@gov.scot>; [redacted]@gov.scot>
Subject: FW: Ministerial Code Advisor- Indemnity

Hi Aileen,

Hope you're well.

I think you have had some sight of this issue yesterday – i.e. an indemnity to the independent advisor on the Ministerial Code.

Are you able to advise on the process to notify, including timings of notifying, as highlighted in yellow below?

Thanks

[redacted]

[redacted] | Finance Business Partner | Financial Programme Management | Scottish Government | Victoria Quay | Edinburgh EH6 6QQ

From: [redacted]@gov.scot>
Sent: 04 March 2021 10:52

To: [redacted]@gov.scot>
Subject: FW: Ministerial Code Advisor- Indemnity

Hello – could you try and speak to [redacted] to get the wording updated in the sub? No need for this to go back to Jackie, [redacted] should be able to clear it.

[redacted]

[redacted]

Thanks,
[redacted]

From: McAllister JM (Jackie) <Jackie.Mcallister2@gov.scot>
Sent: 04 March 2021 10:46
To: [redacted]@gov.scot>; [redacted]@gov.scot>; [redacted]@gov.scot>; [redacted]@gov.scot>
Cc: [redacted]@gov.scot>; Rogers D (David) (Constitution and Cabinet Director) <David.Rogers@gov.scot>; [redacted]@gov.scot>; [redacted]@gov.scot>
Subject: RE: Ministerial Code Advisor- Indemnity

All
Sorry for the delay in responding, I have been discussing with colleagues. I think the conclusion is that if the maximum exposure exceeds £300k then Parliament should be notified of this.
Grateful if the submission could be updated to be clear on this.

Thanks
Jackie

From: [redacted]@gov.scot>
Sent: 03 March 2021 10:26
To: [redacted]@gov.scot>; McAllister JM (Jackie) <Jackie.Mcallister2@gov.scot>; [redacted]@gov.scot>; Solicitor to the Scottish Government <solicitor@gov.scot>
Cc: [redacted]@gov.scot>; Rogers D (David) (Constitution and Cabinet Director) <David.Rogers@gov.scot>; [redacted]@gov.scot>; [redacted]

[redacted]@gov.scot>
Subject: RE: Ministerial Code Advisor- Indemnity

[redacted]

You have given the trail and Jackie can pick up the answer to her question which was about getting approval not notifying Parliament.

[redacted]

From: [redacted]@gov.scot>
Sent: 03 March 2021 10:15
To: McAllister JM (Jackie) <Jackie.Mcallister2@gov.scot>; [redacted]@gov.scot>; [redacted]@gov.scot>
Cc: [redacted]@gov.scot>; [redacted]@gov.scot>; Rogers D (David) (Constitution and Cabinet Director) <David.Rogers@gov.scot>; [redacted]@gov.scot>; [redacted]@gov.scot>
Subject: RE: Ministerial Code Advisor- Indemnity

Hi Jackie,

No problem at all. I've attached the email trail in which this was discussed between [redacted] finance.

The key point, as far as I understand it, [redacted]

[redacted] [redacted] let me know if I have misrepresented your advice at all!

Best wishes,

[redacted]

From: McAllister JM (Jackie) <Jackie.Mcallister2@gov.scot>
Sent: 02 March 2021 22:07
To: [redacted]@gov.scot>; [redacted]@gov.scot>; [redacted]@gov.scot>
Cc: [redacted]@gov.scot>; [redacted]@gov.scot>; Rogers D (David) (Constitution and Cabinet Director) <David.Rogers@gov.scot>; [redacted]@gov.scot>; [redacted]

[redacted]@gov.scot>
Subject: RE: Ministerial Code Advisor- Indemnity

[redacted]
I agree with [redacted] on the reasonableness of this request. I would however just like to better understand the advice that [redacted]

Regards
Jackie

[redacted]

[redacted]

[redacted]

[redacted]

gov.scot

From: [redacted]@gov.scot>
Sent: 02 March 2021 10:42
To: [redacted]@gov.scot>; McAllister JM (Jackie) <Jackie.Mcallister2@gov.scot>; [redacted]@gov.scot>
Cc: [redacted]@gov.scot>; [redacted]@gov.scot>; Rogers D (David) (Constitution and Cabinet Director)

[redacted]@gov.scot>
Subject: Ministerial Code Advisor- Indemnity

Dear [redacted] Jackie,

I am currently acting as secretariat to Mr James Hamilton, who is the independent advisor on the Ministerial Code and is undertaking work on the First Minister's self-referral under the Ministerial Code.

The independent advisor has asked for an indemnity. This seems reasonable, as the Independent Advisor role is unpaid, and similar provision (e.g. under paragraph 18 of the SPFM) is made for those undertaking other similar roles.

On that basis, I have worked with colleagues in [redacted] Finance to develop the attached submission which sets out a suggested approach to providing an indemnity, taking into account the various [redacted] issues, and the expected likelihood of the indemnity being called upon. This includes a letter, to issue from the DFM to Mr Hamilton, which would confirm the approach.

Given that this has [redacted] finance implications, David Rogers has asked that the relevant directors in [redacted] Finance also sign off this submission and that a note of this be included in the submission. Would you be able to consider the attached submission and letter and let me know if you are content, by 10am tomorrow if possible? Once I have received any comments I will tidy up the tracked changes and comments in the document.

Happy to discuss.

Best wishes,

[redacted]

From: [redacted]@gov.scot>
Sent: 08 March 2021 16:20
To: Rogers D (David) (Constitution and Cabinet Director) <David.Rogers@gov.scot>
Subject: FW: Ministerial Code Advisor- Indemnity

So apparently this needs to be on an as and when basis…

From: Wright AG (Aileen)
Sent: 08 March 2021 16:12
To: [redacted]
Cc: [redacted]
Subject: RE: Ministerial Code Advisor- Indemnity

[redacted]

My team has the Committee liaison role for the Finance Committee and a role in the proposed annual reporting process because of the central review of contingent liabilities linked to the annual accounts. We wouldn't expect to be involved in every engagement with the Committee on individual guarantees etc. though.

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[redacted] has highlighted the proposed annual report to the Committee but the timing of this is not agreed, so there could be a risk of adverse comment if the notification was perceived as "late". My own view, therefore, would be that the notification could be made quite simply in a note from the Minister to the Convener, explaining the indemnity, referencing the SPFM, the quantification and the assessment of likelihood. This could be a private note, referencing the sensitivity, if that was preferred.

Aileen

gov.scot

Aileen Wright
Deputy Director
Financial Management Directorate
M: [redacted]

Scottish Government
Victoria Quay
Edinburgh EH6 6QQ

Contingent liabilities

1. FIAG recommended that the authority of the Parliament is required before the Scottish Government can grant a guarantee or indemnity which would, in effect, bind the Parliament into providing the expenditure in the event of the guarantee or indemnity maturing. This does not apply to a guarantee or indemnity which is granted under a statutory requirement to do so or is of a standard type and arises as an unavoidable feature of an activity authorised by statute.

2. The Scottish Government undertake to notify the Finance and Constitution Committee of all contingent liabilities between £300,000 and £2.5 million. The Committee will then have the opportunity to decide what action if any it wishes to take on the Contingent Liability.

3. The Scottish Government undertake, before granting any guarantees or indemnities in excess of £2.5 million (including those without limit), to submit their proposals to the Finance and Constitution Committee. The Scottish Government agrees to provide the Committee with as early notice of the contingent liability as practically possible so as to allow sufficient time for effective scrutiny.

4. The Committee agrees to consider each contingent liability in excess of £2.5 million at the earliest opportunity and may take evidence from the appropriate Minister before deciding whether to approve the proposal or to propose an amendment or recommend that the proposal is rejected. If the Scottish Government does not agree with the Committee's recommendation then the Committee following further information from the Scottish Government may either allow the Scottish Government to proceed or refer the matter to the Parliamentary Bureau for consideration. It will then be for the Parliament to agree whether or not to allow the Scottish Government to proceed.

5. Where the Scottish Government requests that a contingent liability should be considered by the Committee in private session it will provide a full explanation for the reasons for this request when submitting its proposal. In doing so the Scottish Government recognises that the Committee will only agree to take evidence in private in exceptional circumstances.

6. Where there is agreement to consider a contingent liability in private both the Finance Committee and the Scottish Government agree not to make public any of the details discussed during the private session. The Scottish Government will also agree with the Finance and Constitution Committee what information can be made public in relation to the contingent liability itself.

From: [redacted]@gov.scot>
Sent: 06 March 2021 16:10
To: [redacted]@gov.scot>; Wright AG (Aileen) <Aileen.Wright@gov.scot>
Cc: [redacted]@gov.scot>
Subject: RE: Ministerial Code Advisor- Indemnity

Hi Aileen,

Sorry to nag about this, but I wondered if you would be able to look at this on Monday? I'm keen to try and get this resolved over the course of the week.

Happy to discuss.

Best wishes,

[redacted]

From: [redacted]@gov.scot>
Sent: 04 March 2021 12:18
To: Wright AG (Aileen) <Aileen.Wright@gov.scot>
Cc: [redacted]@gov.scot>; [redacted]@gov.scot>
Subject: FW: Ministerial Code Advisor- Indemnity

Hi Aileen,

Hope you're well.

I think you have had some sight of this issue yesterday – i.e. an indemnity to the independent advisor on the Ministerial Code.

Are you able to advise on the process to notify, including timings of notifying, as highlighted in yellow below?

Thanks

[redacted]

[redacted] | Finance Business Partner | Financial Programme Management | Scottish Government | Victoria Quay | Edinburgh EH6 6QQ

From: [redacted]@gov.scot>
Sent: 04 March 2021 10:52
To: [redacted]@gov.scot>
Subject: FW: Ministerial Code Advisor- Indemnity

Hello – could you try and speak to [redacted] to get the wording updated in the sub? No need for this to go back to Jackie, [redacted] should be able to clear it.

[redacted]

The sub can still go up meantime, once it has been updated to reflect that since maximum exposure > £300k, the liability will be notified to Parliament.

Thanks,
[redacted]

From: McAllister JM (Jackie) <Jackie.Mcallister2@gov.scot>
Sent: 04 March 2021 10:46
To: [redacted]@gov.scot>; [redacted]@gov.scot>; [redacted]@gov.scot>; [redacted]@gov.scot>
Cc: [redacted]@gov.scot>; Rogers D (David) (Constitution and Cabinet Director) <David.Rogers@gov.scot>; [redacted]@gov.scot>; [redacted]@gov.scot>
Subject: RE: Ministerial Code Advisor- Indemnity

All
Sorry for the delay in responding, I have been discussing with colleagues. I think the conclusion is that if the maximum exposure exceeds £300k then Parliament should be notified of this.
Grateful if the submission could be updated to be clear on this.

Thanks
Jackie

From: [redacted]@gov.scot>
Sent: 03 March 2021 10:26
To: [redacted]@gov.scot>; McAllister JM (Jackie) <Jackie.Mcallister2@gov.scot>; [redacted]@gov.scot>; [redacted]@gov.scot>
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Subject: RE: Ministerial Code Advisor- Indemnity

[redacted]

You have given the trail and Jackie can pick up the answer to her question which was about getting approval not notifying Parliament.

[redacted]

From: [redacted]@gov.scot>
Sent: 03 March 2021 10:15
To: McAllister JM (Jackie) <Jackie.Mcallister2@gov.scot>; [redacted]@gov.scot>; [redacted]@gov.scot>
Cc: [redacted]@gov.scot>; [redacted]@gov.scot>; Rogers D (David) (Constitution and Cabinet Director) <David.Rogers@gov.scot>; [redacted]@gov.scot>; [redacted]@gov.scot>
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Hi Jackie,

No problem at all. I've attached the email trail in which this was discussed between [redacted] finance.

The key point, as far as I understand it, [redacted]

[redacted]- let me know if I have misrepresented your advice at all!

Best wishes,

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gov.scot

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Happy to discuss.

Best wishes,

[redacted]

From: Rogers D (David) (Constitution and Cabinet Director)
Sent: 08 March 2021 16:58
To: Chief Financial Officer <cfo@gov.scot>
Subject: FW: Ministerial Code Advisor- Indemnity
Sensitivity: Private

David Rogers
Director, Constitution and Cabinet | The Scottish Government | 4 N.04, St Andrew's House, Edinburgh, EH1 3DG | T: [redacted] | E: david.rogers@gov.scot

From: Wright AG (Aileen) <Aileen.Wright@gov.scot>
Sent: 08 March 2021 16:12
To: [redacted]@gov.scot>; [redacted]
[redacted]@gov.scot>
Cc: [redacted]@gov.scot>
Subject: RE: Ministerial Code Advisor- Indemnity

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gov.scot

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[redacted]

[redacted]

[redacted]

[redacted]

gov.scot

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Sent: 02 March 2021 10:42
To: [redacted]@gov.scot>; McAllister JM (Jackie) <Jackie.Mcallister2@gov.scot>; [redacted]@gov.scot>
Cc: [redacted]@gov.scot>; [redacted]@gov.scot>; Rogers D (David) (Constitution and Cabinet Director)

<David.Rogers@gov.scot>; [redacted]@gov.scot>; [redacted]
[redacted]@gov.scot>
Subject: Ministerial Code Advisor- Indemnity

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Happy to discuss.

Best wishes,

[redacted]

From: Rogers D (David) (Constitution and Cabinet Director)
Sent: 09 March 2021 19:13
To: Deputy First Minister and Cabinet Secretary for Education and Skills <DFMCSE@gov.scot>
Cc: Cabinet Secretary for Finance <CabSecFinance@gov.scot>; Lord Advocate <LordAdvocate@gov.scot>; Solicitor General <SolicitorGeneral@gov.scot>; Permanent Secretary <PermanentSecretary@gov.scot>; Fraser L (Lesley) <Lesley.Fraser@gov.scot>; Thomson KAL (Ken) (Director-General) <Ken.Thomson@gov.scot>; Macniven R (Ruaraidh) <Ruaraidh.Macniven@gov.scot>; Chief Financial Officer <cfo@gov.scot>; Rennick NS (Neil) <Neil.Rennick@gov.scot>; Troup C (Colin) (Dr) <Colin.Troup@gov.scot>; [redacted]@gov.scot>; [redacted]@gov.scot>; [redacted]@gov.scot>; McAllister C (Colin) <Colin.McAllister@gov.scot>
Subject: OFFICIAL - SENSITIVE: INDEMNITY FOR THE INDEPENDENT ADVISER ON THE MINISTERIAL CODE

Official – Sensitive

PS/Deputy First Minister

Copy as above

I attach a submission for Mr Swinney's attention.

David Rogers
[redacted]

David Rogers
Director, Constitution and Cabinet | The Scottish Government | 4 N.04, St Andrew's House, Edinburgh, EH1 3DG | T: [redacted] | E: david.rogers@gov.scot

From: David Rogers
Director, Constitution and Cabinet
9 March 2021

Deputy First Minister

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

Copy List:	For Action	For Comments	For Information		
			Portfolio Interest	Constit Interest	General Awareness
[redacted]			[redacted]		[redacted]
[redacted]					

[redacted]

From: Douglas Ross <douglas.ross@advocates.org.uk>
Sent: 09 March 2021 12:17
To: [redacted]
Subject: RE: [redacted]

[redacted]

Yes, I should be able to make time on either Thursday or Friday.

Regards

Douglas

Douglas Ross QC Ampersand Advocates

phone: [redacted]
web: www.ampersandadvocates.com

Clerk: Alan Moffat
Deputy clerks: Jennifer Dunn, Sheena Hume, Shawn McArthur & Kathryn Ferguson

Leading Top Ranked Set in Chambers & Partners and The Legal 500

From: [redacted]
Sent: 09 March 2021 10:53
To: Douglas Ross <douglas.ross@advocates.org.uk>
Subject: [redacted]

Hi Douglas,

Hope you are well and that you had a good weekend.

[redacted]

[redacted]

On that basis, I wanted to check if you were available at all on Thursday or Friday [redacted]

Best wishes,

[redacted]

****
This e-mail (and any files or other attachments transmitted with it) is intended solely for the attention of the addressee(s). Unauthorised use, disclosure, storage, copying or distribution of any part of this e-mail is not permitted. If you are not the intended recipient please destroy the email, remove any copies from your system and inform the sender immediately by return.
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For more information please visit http://www.symanteccloud.com

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RE: Private- transcript

From: [redacted]@gov.scot>
To: [redacted]@gov.scot>
Date: Tue, 09 Mar 2021 19:25:12 +0000

[redacted]

Many thanks for this.
The First Minister has read the transcript and noted its contents.
Kind regards

[redacted]

[redacted] | **PS/First Minister | T:** [redacted]

All e-mails and attachments sent by a Ministerial Private Office to any other official on behalf of a Minister relating to a decision, request or comment made by a Minister, or a note of a Ministerial meeting, must be filed appropriately by the recipient. Private Offices do not keep official records of such e-mails or attachments.

From: [redacted]@gov.scot>
Sent: 08 March 2021 18:30
To: [redacted]@gov.scot>
Subject: Private- transcript

Hi [redacted]

As discussed, please see attached transcript of the discussion between Mr Hamilton and the First Minister. This has been edited from the verbatim transcript to remove information that might be problematic from a legal perspective, as discussed.

Happy to discuss.

Best wishes,

[redacted]

From: [redacted]
Sent: 09 March 2021 12:32
To: Alex Salmond <alex@alexsalmond.scot>
Subject: RE: Webex meeting invitation: Meeting with Mr Hamilton

Dear Mr Salmond,

Many thanks for the update, I have let Mr Hamilton know.

Best wishes,

[redacted]

From: Alex Salmond <alex@alexsalmond.scot>
Sent: 09 March 2021 11:58
To: [redacted]@gov.scot>
Subject: Re: Webex meeting invitation: Meeting with Mr Hamilton

Dear [redacted]

I undertook to provide Mr Hamilton by today a further note on the legal advice published by the Government during our evidence session and its implications for the ministerial code.

[redacted]

I hope that is satisfactory to Mr Hamilton.

Yours sincerely

Alex Salmond
Sent from my iPad

On 4 Mar 2021, at 12:49, [redacted] <messenger@webex.com> wrote:

[redacted] **is inviting you to a scheduled Webex meeting.**

Friday, March 5, 2021
3:00 PM | (UTC+00:00) Dublin, Edinburgh, Lisbon, London | 1 hr 15 mins

[redacted]

More ways to join:

Join from the meeting link

[redacted]
67ca6efbe90ea25fbae

Join by meeting number

Meeting number ([redacted]

Meeting password: [redacted] from phones and video systems)

Tap to join from a mobile device (attendees only)

[redacted]United Kingdom Toll

Some mobile devices may ask attendees to enter a numeric password.

Join by phone

[redacted]United Kingdom Toll

Global call-in numbers

Join by video system, application or Skype for business

Dial [redacted]

You can also dial [redacted]and enter your meeting number.

Need help? Go to https://help.webex.com

<mime-attachment.ics>
<Webex_Meeting.ics>

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From: [redacted]
Sent: 09 March 2021 17:33
To: James Hamilton [redacted]
Subject: Final transcript

Hi James,

Please see attached transcript of the interview with Mr Salmond.

Best wishes,

[redacted]

Meeting with Mr Salmond- 5/3/2021

James Hamilton, Independent Advisor under the Ministerial Code
Alex Salmond, Former First Minister
[redacted] Secretariat to the Independent Advisor under the Ministerial Code

Transcript of the meeting

JH: I'll start now formally, as up to now it's not been recorded.

AS: As you wish.

JH: So, Mr Salmond, thank you for agreeing to participate in the interview. As you know, I am conducting an investigation- you know that, I needn't repeat it.

Thank you for the various written statement you have provided. They've been very comprehensive and that makes my work a lot easier, so I really have a relatively small number of questions that in my mind are still outstanding or I would like to hear you develop a little more, and obviously you may have other things you want to add as well.

[redacted] who's providing secretariat support for me and organisational support will also be present during the interview to take notes and to provide practical and technical support if required.

The meeting is being recorded. The intention there is that a transcript of the conversation will be produced, and that will be shared with you as a record of the discussion, and then once we agree the transcript the recording will be destroyed.

Now, in producing the report, I may find, I think I could say I will find, that I want to refer to some of the things that are said and the information provided I will be taking appropriate action to ensure that the report is compliant with the relevant court orders.

So, I don't know, do you have any questions about the process, or how the information you provide will be used?

AS: No, I'm very happy with that. The one question I would have, I take it, given that you're going to make sure it is compliant, I can speak freely, in terms of names in this interview.

JH: Yes, you can. Now, just to clarify that, I will probably not publish everything that's said to me as an appendix, I thought about doing that, but I think it enables people to speak more freely, but what we will do is when [redacted] is producing the transcript I think that at that stage we will try and blank out names, et cetera, anything that might- well, names that might cause a problem in the application of the court order, in compliance with the court orders, and…

AS- [redacted]

JH: [redacted]

AS: Of course.

JH: But the intention then, now even if I don't intend to publish stuff as an appendix, the stuff will be preserved by, obviously the Secretariat will have it, and people may make applications under Freedom of Information and so forth, so I can't give any guarantee that anything...

AS: That's alright, I've given evidence, I've given a lot of evidence under oath Mr Hamilton...

JH: Sure, I appreciate that.

AS: ...and I'm quite happy to say what I need to say.

JH: Now, I'll start just by mentioning obviously, as you know I'm looking at allegations of the breach of the code, and as a result of what Mr Swinney said in Parliament I am free, I think, to look at any aspect of the code which may have been breached. What I am looking at, essentially, first of all the original matter which was specified which was the failure to report under paragraph 4.23 of the code, and 4.24, and the other provisions there. [redacted] If there is anything else feel free to mention. And then the final thing is that you have raised the question of a breach of the duty to comply with the law, which is paragraph 2.30 of the code, and I would like to explore that a little further with you when we come to it, but there's a couple of other things. I don't know if there is any other aspect of the code you particularly want to emphasise, but obviously you are free to...

AS: No, no that's, that I think are the, certainty covers the main areas. Obviously the last one you've mentioned, the failure to ensure that your government is acting lawfully, it is very relevant to the information that's just newly published so it's probably on that that where we will be make the additional submission.

JH: Okay.

AS: I don't mind discussing, well I mean, obviously we know a great deal about this now, so I don't mind discussing.

JH: Yeah, sure. And I do want to ask a few questions about just the principles involved or what you think they are. I'll just start with going back to, I suppose more nearer beginning of the story, and that relates to the letter which you received from the Permanent Secretary,

and I think that letter, just to clarify, did you receive the letter on the 7th of March or was it dated the 7th of March? Or can you recall?

AS: It was certainly dated the 7th of March. I believe I received it on the 7th of March. I was in London at the time, I remember receiving it. There had been a, the Permanent Secretary's Private Secretary was trying to find an email for me, so I'm a little bit hazy, I think that was the morning of the 7th of March, and I received it in the afternoon of the 7th of March. I think that's the right...

Commented [redacted]: Have removed the specific name as the job title is hopefully indicative enough.

JH: It was sent by..

AS: ... certainly it was dated...

JH: It was sent by email, was it?

AS: It was sent by email, yeah.

JH: Okay. And, now you've told us that you were not told the name of the complainants in that letter.

AS: That's correct, yeah.

JH: But you were given some details of the complaints but you have also said that you essentially had to work out the dates yourself, and the locations, and that everything turned out to be wrong anyway? Both the dates and...

AS: Substantially yes. I mean, the reason I wanted to get a hold of my diaries, which the Permanent Secretary refused initially, or any other documentation for that matter, was to try and, because I didn't have a comprehensive copy of my diary. I managed to assemble bits and pieces from various emails, you know, historic emails, but when I did eventually get a copy of my diaries, albeit they were redacted, that would be in July, I was able to establish, I think I'm right in saying, either every date or location in the broad details I'd been given turned out to be wrong, or there was no date at all, so.

JH: You were able to identify what incidents were being complained about, or. alleged incidents?

AS: To some extent, I mean I wasn't sure, I mean I obviously started my own investigations. You've got to remember that we're talking about, even at that stage, incidents that were purported to have happened 5 years before

JH: Sure. Now, you met Mr Aberdein, I think it was, was it the 9th of March?

AS: No, he phoned me. I was in a car, actually going past Donald Trump's golf course...

JH: Yes, I know you've...

AS: … I was in a car with other people…

JH: … and you didn't .

AS: Sorry?

JH: You were in a car with other people, and my understanding is that you didn't give him any detail of the complaints at that stage, because other people were..

AS: I didn't give him any detail at all, because it obviously wasn't a subject matter I could speak about with other people listening, so I just listened to what he said, it was quite a brief phone call.

JH: Okay. When did you first give him any detail or did you at any stage?

AS: Well, he gave me the detail first, I mean he told me the name of one of the complainants, and he, well what he said on the 11th, as I remember, was he had met [redacted] I cannot be absolutely certain if it was on that phone call, because I was very conscious of the other people in the car and I wasn't wanting to continue the call, and I knew I would have to speak to him when I was free to do so. I think was on the 13th. But it's possible he gave me- well, he certainly told me he had met [redacted] and you know he was wanting, he said these things he had to tell me. Obviously I had just received the letter from the Permanent Secretary so I realised what it was about. He may have given me the name of one of the complainants at that stage or it may have been on the 13th. On the 13th, he described to me the, what [redacted] had told him, which included both the name of one of the complainants and a broad description that there were two complaints effectively, of one major incident, as was put to me, one minor incident, and he said that first. There was a reason for that, Mr Hamilton, that in having received the Permanent Secretary's letter I was determined not to speak to anybody about it, apart from the lawyers I engaged. And obviously people had information to give me, that was another thing, but I was kind of determined not to give people information. But I spoke with Geoff quite freely on the 13th.

JH: So, sorry- the first phone call with Geoff Aberdein when you were in the car was on the 9th…

AS: The 9th.

JH: And then subsequent, then it was the 13th before you had further conversation with him?

AS: That's correct. I mean, there was, we exchanged messages, just whether you are free to speak. But I knew it was a conversation we would have to have when I was free to speak, wasn't with other people, and would be a private conversation. He came to see me in my hotel in London.

JH: When you met him, on the 13th, had you at that stage worked out the identity of the complainers.

AS: No. I believed I recognised, from the description, one of the complaints. But I couldn't be absolutely certain, because you have got to understand the description was, and what my memory of the incident was, were quite different.

JH: Okay.

AS: And as indeed was demonstrated in the High Court of Judiciary. So, you know, it was, it's very difficult to be confident about something when that's not your recollection as to what that's been talked about. And of course there weren't dates, there wasn't given in that detail, and as far as the second complaint's concerned, I mean there was a lot of general stuff which seemed, just quite frankly, it seemed bizarre, and subsequently wasn't proceeded with. It was just general stuff. It didn't seem to be applied to any incident or individual. But the, as far as the second specific incident was concerned, and such detail, it wasn't clear at all to me who that complaint was from. And in fact I didn't know until some substantial time later, well into I think middle of May who the second complainant was. And partly that was because as the description emerged of what was being complained about it was heavily misleading so I mean [redacted]. So it wasn't, I think, until, well I'm certain, until May or maybe even later that we actually were certain of the name of the second complainer. Certainly in to May.

JH: Now, when Geoff Aberdein spoke to you on the 13th he gave you one name, I think, is that right, he was able to...

AS: That's correct..

JH: ... give you some detail about two incidents?

AS: Yes, he told me what [redacted] had told him, that there were two complainants, one was, I think the expression was one was a major, one was minor. That's how it was expressed. And that's not my words, that's him communicating what had been told by [redacted]

JH: And that was, was that the first you were aware of the two particular incidents which were in fact complained of? Sorry, well I mean was it the first you were aware what two incidents were complained of? I mean, had you worked...

AS: Well, as I say there was a description.... Are you still hearing me Mr Hamilton?

JH: Yes, I am, yes.

AS: There was a description in the letter of the 7th, but there was a lot of, I mean, there were, as I remember, laid out specific incidents, and then it was laid out some general stuff, you

know, I don't. I'm going to give you an example, just not to be flippant, as I remember it, [redacted] So if we just say that some of this general stuff seemed bizarre, as opposed to anything, you know, that would constitute a complaint. So there was a lot of general stuff, that didn't seem to be applied to anyone, but there were specific incidents noted. But they didn't have- well, insofar as they had dates, and I think some of them did, the dates subsequently turned out to be wrong. [redacted] Anyway, I don't know if it's going to help you to go into all of this., but sufficed to say that the, what was given to me didn't have in any sense that you would understand as a, given your previous role, of any specification of a charge or anything like that. It was pretty shoddy and opaque.

JH: What I'm really trying to get at is was it as a result of the conversation with Mr Aberdein rather than the information provided by the Permanent Secretary that you became aware what incidents were, or alleged incidents, were an issue?

AS: What Geoff Aberdein told me, relayed from [redacted] was the name of one of the complainants, so what Geoff said, and he said it to me first, that confirmed the name of one of the complainants to me.

JH: I see.

AS: As far as the other complainant, Geoff didn't know the name of the other complainant, neither did I. [redacted]

JH: Okay, I think that answers my question. And did you ever give Geoff Aberdein any detailed information about the complaints that were in fact made, other than what he already knew from [redacted]

AS: We would have a discussion of my memory of the incidents. I have to say again, the, what was being suggested, insofar as there was any detail at all, was quite different from my recollection. And you know, subsequently matters were tested in court, as you know Mr Hamilton.

JH: Sure, yeah.

AS: So the, but so, you know, I suppose I was trying, I would discuss with Geoff, because obviously he was a long term confidante and was trying to assist you know what we should do, but I didn't really discuss in any detail the incidents because I knew I would have to try and find out more details from other sources, and Geoff didn't know the details, and therefore there was little point discussing that with him. The nature of the discussion with Geoff was what to do, you know, what approach should I take. Obviously, I asked him things like had he ever heard of this policy? Because I had never heard of it, and there had been no public discussion of it, there was no public record of it. I mean, the first thing I did, maybe after I recovered from the considerable shock of getting the letter, once I had sort of

steadied myself, I went onto the public record to try and identify you know what was this all about. What was this policy under which I was being notified of purported incidents and complaints, and of course there was no public record at all of this policy, so there was a, I was in a considerable confusion as to what to do. But I did discuss, that was the aspect I wanted to discuss with Geoff.

JH: Okay, no I understand that. And I think, the other thing, and I spoke to Geoff Aberdein this morning, who again confirmed about [redacted] your wishes that there should be a meeting, in order for you to discuss the problems, I suppose, that you had with the procedure and the way it was being implemented. You accept that?

AS: I wanted to, the, it seemed the route forward- [redacted]

Commented [redacted]: Have tried to anonymise. Not sure it really works!

JH: Yes.

AS: ... [redacted]

JH: [redacted]

AS: [redacted]
t

JH: [redacted]

AS: [redacted]

JH: [redacted]

AS: [redacted] The, and, but I met with my, I engaged solicitors and I met with my solicitor and my counsel, I'm not certain of the exact date there, it could be the following week after, maybe the end of the following week- so that would be roughly about the, oh I don't know, the 15th or 16th of March. And it was at that meeting, having reviewed the policy, that the, what seemed to be an arrangement for a meeting with First Minister seemed to be the way forward, yeah.

JH: Okay. That's...

AS: Because in the policy, the policy, as you know because I'm sure you've read it a number of times is quite opaque, in the sense that it seems to be some sort of hybrid policy. But at the end of the day, it looked to us at that stage like the final decision maker in the matter was the First Minister. Which of course, in terms of my recognition of the Fairness at Work policy, the policy I knew and understood, where obviously the First Minister is the final

arbitrator under the Ministerial Code, obviously, of the fate of a minister who's complained about.

JH: Okay. So, then, I come now just to one or two questions about the meeting on the 2nd of April. Any you had a long private meeting with the First Minister. Did you discuss the details of the complaints with her at that meeting?

AS: Yes I did. I gave her the letter I had received. I should say, I mean it's up to you what questions you ask Mr Hamilton, but on the meeting on the 29th- I mean, again it's up to you- [redacted]

JH: Yes.

AS: And he phoned the day after to tell me...

JH: He has told me that, I'm aware of that, and...

AS: Right, okay.

JH: ...given me information about what happened [redacted]

AS: I've done that or Geoff has done that?

JH: Geoff Aberdein, I spoke to him this morning and he's...

AS: Well, I don't know what Geoff Aberdein obviously said to you this morning so..

JH: [redacted]

AS: Anyway, he phoned me on the 28th, or we had a phone call on the 28th. We had a phone call the day after and that was in order to arrange the meeting on the 2nd of April.

JH: Okay.

AS: Because clearly, as I said in my submission to you, the only person who can invite you to their home is the First Minister.

JH: Yeah, I understand that point, and I was aware that you had made that point. No, it was just to confirm. Now, you mention also that you were aware under the code that the First Minister would notify the civil service of discussions at a meeting which was discussing official business.

AS: That's correct, yeah. My objective at the meeting was to suggest to the First Minister that she should contact the Permanent Secretary.

JH: Yep.

AS: And, in order, because one of the early points that we had established in the policy was that as far as former ministers were concerned there was no opportunity for mediation...

JH: Yes.

AS: … which there was for present Ministers, for current Ministers, and which there had been in every policy I knew of. So one of the early things that Mr Duncan Hamilton in particular identified as a glaring omission from the policy, which is still unexplained, I think it's paragraph 4, has the mediation. It's not necessarily described in terms of mediation but it's a mediation proposal. But a mediation option that the Permanent Secretary is meant to look at, in I think it's paragraph 4 of the policy, there is no such option for former ministers. That was one of the very early issues of the procedure itself that we'd identified. And so the key objective of the meeting from my perspective of the 2nd of April, and why of course Duncan Hamilton was there was to reinforce this apparently glaring error in the procedure and I wanted to ask the First Minister to contact the Permanent Secretary to say "is there not a missing link in this policy, and is mediation not a sensible way forward?".

JH: And did she say to justify the absence of mediation or was there any discussion on that?

AS: Well, I mean, the First Minister didn't seem to have great knowledge of the policy. You know, we looked over the policy itself, I mean and obviously that was a point of discussion both in the private meeting I had with her and then when met subsequently with all five people there. We were looking, that was one of the points that was zeroed in to, and Mr Hamilton at that stage during the meeting with all five of us was explaining what he thought from a legal standpoint were some of the difficulties that he had already identified with the policy. But in terms of what the First Minister could do about it, the idea of mediation was my central aim in seeing the First Minister, and my assumption was that she would communicate with the Permanent Secretary and introduce, and my belief then, and it is still my belief now is that that is a perfectly legitimate thing to ask the First Minister to do and it would have been a perfectly legitimate thing for the First Minister to do it, in terms of the nature of that policy, and the fact that mediation missing from it.

JH: And did she say anything to you to explain that she was excluded from the process under the terms of the procedure in respect of former ministers?

AS: No, because she didn't show a great familiarity with the procedure. She seemed reluctant to initiate contact with the Permanent Secretary, but she said that she would intervene, or she would make that intervention, I think, at the appropriate stage or when the time was right, or at some point, and she spoke as to how that might happen, that the Permanent Secretary might approach her and she could make the intervention then.

JH: This is the statement that Duncan Hamilton has given evidence about, are you talking…

AS: Yes. I've seen his evidence, and that's exactly it.

JH: When you were on your own talking to her, did you, you presumably explained aspects of the procedure which you were dissatisfied with and did she at any stage say to you that she had no role under the procedure?

AS: No, she said- I mean we talked about the procedure and she seemed to suggest that- I mean she knew that there was a procedure and she told me that it had come into being because of the Civil Service wanted something because of Mark Macdonald. Now, Mark Mcdonald is the Minister who resigned in November of 2017, and he's mentioned a couple of times when people defend the policy, but I mean Mark was a current minister who resigned. He was only a former Minister after his resignation, so I didn't see why that would be a reason for having a policy on former ministers. But Nicola, at that meeting, didn't have any great understanding, or certainly didn't tell me, what her understanding was of the genesis of the policy. I mean, it was almost confusion, you know, as to where this policy had arisen from and, I have to say, after living and breathing this for the last three years I am still uncertain as to the genesis of this policy.

JH: There was no mention of the "me too" movement?

AS: Well, I mean obviously I was, yeah I saw this item, but clearly in the atmosphere of November 2017, the "me too" movement was the background in which workplace policies were being examined, but, and I know you followed my evidence to the Parliamentary Committee, but in the statement in the Parliament on the 31st of October, nobody said "well, the obvious missing link in this policy, or the obvious response we should take to the 'me too' movement is to have a policy for former Ministers. Everybody who asked a question wanted to propose how they could improve their policy for people actually in the Parliament, and in the Government, and many suggestions were made to do that. But nobody at that stage was saying "well, the way forward is to have a policy for former ministers". And, if I may say so, no one else did that either. You know, at that stage no one in Northern Ireland, or in Westminster was saying that the great missing link in our workplace policies was to have a policy for former ministers. And even now, when retrospectivity is being examined, as I discussed with the Committee, it is either being done on a legislative basis or alternatively where it's being done for historic incidents where people are still pass holders, who are still in the workplace in question. Because the primary intent of any workplace policy is the duty of care to people actually in the workplace, not people who are no longer in the workplace.

JH: I don't want to stray too much into things which are not directly connected with the Code, except as background in a sense.

AS: Yes, I understand that, and, but the answer is that we discussed the, I was keen to suggest to her that mediation at that stage I thought could be a way forward. That I thought the policy was flawed. I didn't recognise, if I can just say, I didn't recognise in the slightest Nicola's description of that meeting, which she gave to the Parliamentary Committee earlier this week, in terms of reference and why the discussion of what was said about the substance of complaints was allowed anyway, I've got no idea, that would be a question perhaps I should address to the Committee Convenor, but suffice to say I didn't recognise that in the slightest and what I made clear to Nicola at the meeting was that (A) that what was described to me in the letter of the Permanent Secretary was not my recollection at all,

and that therefore I was disappointed to see Nicola suggesting otherwise in front of the Parliamentary Committee under oath.

JH: Were you, I know that there has been this discussion about whether this was a government meeting or had some other character? Did it concern you at all that there wasn't a private secretary or one of the permanent officials present for the discussion which for a government meeting, or a meeting on official business, is required under paragraph 4.22 of the Code?

AS: Well, that's not, wasn't my concern. I mean that's for Nicola to define how she wanted- she and I wanted a private meeting, and, you know, I mean, and obviously my interest was in, having had the private meeting, that she would then go to the Permanent Secretary, so I thought to my mind, that was a perfectly proper request and I didn't see anything improper, as I've said in my evidence, I mean I know that other political parties say that she shouldn't have been having these meetings, and, but I don't regard that as a substantial, or even a breach of the Code. A different matter as to whether the meetings should be reported, of course, that's a different aspect, but to say she shouldn't have them is not the case.

JH: But it didn't set any alarm bells ringing in your mind that perhaps she regarded this as something that was more private and personal and, than something that was..

AS: Well, there was no alarm bells that I would want to ring. I'm a private citizen, I'm entitled to have private meetings, and you know, if there's alarm bells, that's up to Nicola in terms of her obligations under the Code. But I was confident I wasn't putting her in an invidious positon because I was wanting her to report to the Permanent Secretary what I was saying to her

JH: Now, you came out of that meeting…

AS: And also, can I just say that, you know, if the First Minister of Scotland wanted you to have a private meeting, and you're wanting to have the private meeting, I don't see anything wrong with that.

JH: Okay. When you came out of the meeting, did you feel confident that she would intervene to push for mediation if necessary?

AS: Yes I did, and the reason I know this completely is that I was very relieved about the meeting. Nicola gave every indication that she was going to assist, every indication that she was prepared to make that intervention and I thought we had found a legitimate intervention, something that was legitimate to intervene on, because it was something glaringly obviously missing from the code, I mean I didn't know then, but obviously a year later it was one of the things that Lord Pentland alighted on even after the action was totally conceded by the Government, even after the, you know, they collapsed the case that Lord Pentland actually identified it in when he was delivering his interlocutor or judgement, you'll know better than I, he actually said about that cause, he said yeah that's the thing that's missing, for former Ministers, but is there for current Ministers, so it was something that we

identified early and something I felt was a legitimate request to make, and I had every encouragement to believe that Nicola was going to do it.

JH: Yes, and there had been, as we know, there had been no consultation with former Ministers about this new procedure either.

AS: No. As you know, Mr Wightman, in the Committee, if you were watching the evidence session, produced a letter to former Ministers…

JH: Which wasn't sent.

AS: .. which wasn't sent. And I identified the same letter, but unfortunately we got it under disclosure in the criminal case, as you can imagine, we got, I don't need to tell you this, we got thousands of documents, but, so but we've subsequently written to the Committee pointing out that they can get that from the Government now they've had it identified. They weren't given it by the Government but, and I don't know where Mr Wightman got it, nonetheless its…

JH: Now we're getting outside the… when we start to discuss any aspect of the merits of the procedure of otherwise, which I think is…

AS: Of course. But there was a letter drafted, to answer your question, to former First Ministers in late November 2017 but was never sent.

JH: Yes, no, I heard that evidence being given. Now the nest, after the 2nd of April, the next contact you had with the First Minister I think was the 24th or the 23rd, the 24th I think of April, a telephone conversation, am I right?

AS- I think there's a WhatsApp message that says what was in it. I was contacting her to tell her that we had put in the request for mediation to the Permanent Secretary

JH: You weren't concerned that you hadn't heard anything for three weeks after the meeting?

AS: No. I mean, I, obviously you couldn't intervene in support of mediation, or I would expect, before we made, you know, before we made the proposal. The first thing to do was to tell Nicola that the proposal for mediation had gone in. It's a while since I've looked at them but I think you'll find a WhatsApp message where I say that, you know that the proposal for mediation has gone in.

JH: All your subsequent communications with the First Minister, she made it clear that she was against, or at least she would not intervene to argue for mediation?

AS: Well, you will see there was a, I think I've got it here actually, I've got the, you'll see that the, when, yeah, it's when we get to June, right?

JH: Yes.

AS: And in the 1st of June, she sends me a WhatsApp saying "and we've already spoken about why me intervening is not the right thing to do".

JH: Exactly.

AS: When I got that I, well as you see I replied, I was very disappointed and very disturbed, because that wasn't my recollection. So I WhatsApped her back on the 3rd of June, saying, you know, I think there was several drafts of that WhatsApp message that, which were, well I decided on one which was understated. But you can see I was surprised and disappointed.

JH: But that was the first time you discussed the matter after the 2nd of April?

AS: That was the first time that I realised that her positon had changed from being, to not intervening.

JH: But the only time she had indicated that she would intervene was at the meeting on the 2nd of April, am I correct about that?

AS: Well, yeah, that's what I was going on, you know when I, when I spoke to her, when I texted her, that's, I think you'll find, I texted her to say that the mediation proposal had gone in, and then I asked to see her again on the 31st of May.

JH: Yes, and then, but I'll just come to that in a moment. I mean, you heard her giving her evidence, where she described her state of mind on the 2nd of April, and when she was pressed on the matter she didn't deny that she might have said, she didn't think she had said it, but she wasn't prepared to contradict Duncan Hamilton's evidence either, if I understand it, and she was effectively saying she was in a state of shock, and so forth, as a result of the information you had given her. Do you recognise that picture that she gave?

AS: No, the problem was, I mean, she didn't deny it, but she was under oath Mr Hamilton.

JH: Yes.

AS: But she wasn't, she didn't give any impression on the 2nd of April of being in a state of shock. On the contrary, she was calm and collected and thinking, and the conversation was about how she could intervene, it wasn't whether she was going to intervene, it was the circumstances in which she could intervene.

JH: Okay.

AS: And it was an entirely, you know, people react to shock in different ways, but, and I've known Nicola a very long time, and I can absolutely assure you she was not shocked, or in a state of shock, or in a state of any distress, nor was her brain spinning. Her brain working as it always does in what I saw then was a productive and legitimate effort to assist.

JH: But there isn't any evidence, I mean she quite clearly changed her mind at some point after the 2nd of April..

AS: She did.

JH: ... and the single occasion on which she made this statement that she would intervene if necessary was the 2nd of April?

AS: Correct, but then I didn't meet her again until the...

JH: She was entitled to change her mind, presumably?

AS: I'm not suggesting she was not entitled to change her mind, I've never suggested, I mean I had a different recollection of events and I told her that...

JH: Okay.

AS... but I obviously I am not suggesting that somebody is not entitled to change their mind, I'm merely saying what I know to be true, that on the 2nd of April she was going to intervene and it was just a question of how she could do it.

JH: And then when you met her on the 14th of July she agreed to correct the impression that she was opposed to arbitration. How did you form the impression that she was actually opposed to arbitration, as distinct, and I think then we're talking at that stage am I right in saying we're talking about arbitration as to how the procedure should be changed, rather than mediation as to the substance of the complaints

AS: That's correct Mr Hamilton. I mean, what happened was..

JH: Obviously these were an issue at different stages?

AS: Yes, indeed. What happened is we put in our proposal for mediation, which incidentally was rejected as we now know without consultation with the complainants. But we put that in about the 23rd or 24th of April, something like that, and we got an immediate response saying no. And as I say, as we now know, and as the Committee now knows, the decision was taken without, they were told afterwards...

JH: I think it's going beyond my remit really, but how do you know they were not consulted?

AS: Because it's in the documents that have come before the Committee, that they were told afterwards as a fait accompli, by Judith Mackinnon, that I had put in a proposal for mediation and the Permanent Secretary had rejected it. Subsequently they were consulted and in contrast to the Permanent Secretary's evidence under oath, when she said that it was rejected, actually the complainant said she might be prepared to consider it at a later stage, is actually what she said in an email to Judith Mackinnon. But I know that's not your remit.

JH: [redacted]

Commented [redacted]: Audio is difficult to hear at this point.

AS: Right, but so you're probably very thankful of that. But, so, the proposal for mediation was rejected in late April, beginning of May. So we moved on to making then a substantive case against the policy itself, against the nature of the policy, and that's what my legal team, and, I mean, we can easily send you the material if you wish to see it, but my legal team were stating as substantial objections to the policy. Now, one issue that arose as, because the Permanent Secretary just sort of waived away all our objections as she was totally satisfied the policy was legal, proper, et cetera et cetera. One of the other possibilities that emerged because I was in a position where my legal team were telling me to take a judicial review against the policy. That was the advice that they would give, the advice they gave me, and the advice that probably any other client would have taken, but I was in the position of being a former First Minister, who was being presented with the best legal option was for me to sue the government I once led, and although legally that seemed like a good idea, for many other reasons it didn't seem like a good idea, mostly. So when it emerged that there was another possibility, i.e. there could be a legal arbitration about the nature of the policy as opposed to the nature of the complaints, and there might be a way to settle the legal difficulties with the policy, so as basically as the person being accused I could get a fair representation and a fair process and a fair procedure then that seemed like an avenue that should be pursued. [redacted]

JH: [redacted]

AS: [redacted] obviously there seemed to be advantages as I detailed to Nicola, for both sides, that in a, quite a confined period, in private, with confidentiality for all parties assured, we could have clarified the legal arguments that were taking place. I don't know, I was First Minister when this Act was put though, this arbitration Act, which has been fairly successful in a range of areas in Scotland, and gave you effectively a judicial review-type ruling but in private, quickly, and in confidence. And I had made it very clear I was prepared to accept arbitration as binding, and if this policy was considered to be lawful and proper and procedurally fair I would submit to it. But as I strongly suspected it would not be, and I was confident in the opinions of counsel that they thought that the worst that could emerge from such a process of arbitration, it would be a policy where they were satisfied I could take my case to. Because, you know, I was in the position that my legal advisors said "under no circumstance must you submit to this policy. Because you are up against a stacked deck". So this seemed like a way forward. When we formed the impression that Nicola Sturgeon herself was against arbitration but she assured me that wasn't the case when we eventually met [redacted]

[redacted]

JH: Okay, I think I understand what you're saying about that.

AS: Okay, well in two sentences we had the third meeting, the one on the 13th of July, I think, the 13th or the 14th of July [redacted], I went to Glasgow to meet her in her home again.

JH:

AS: I haven't seen that letter so I, I mean you're telling me that. I mean, I didn't ask her at that stage to intervene in favour of arbitration, I, as you'll see from my WhatsApp message, I asked her to remove any impression that had been formed by anyone that she was against it.

JH: Yes. Okay, no I understand that and I can see why, from your point of view, it was something that you would push for. But on the other side, I can only imagine that if the Government, having introduced a new procedure, the first time there was a case, then the was an intervention to alter the procedure, in a case involving yourself, I would have thought there would be a substantial number of people suggesting that this was favouritism, an intervention on behalf of a political colleague so I would have thought that to take sides on this, in any way, for the First Minister to take sides in support of, rather than staying neutral, would have been a very difficult thing to expect her to do.

AS: Well, three things Mr Hamilton: One, I didn't expect her to do it, I asked her to make it clear she wasn't opposed to it...

JH: Yeah.

AS... which she agreed to do.

JH: She did.

AS: I wasn't, well I know that from the WhatsApp messages, she told me she would do it, and you've now told me she did do that and that's fine. The second thing I would say to you is that there was no, this matter was not in the public domain at all at this time...

JH: I see

AS: ... confidentiality of the procedure was secure, as far as I knew, the alternative, as I saw it was unless we got an agreement legally on the procedure then it was going to end up in the Court of Session. Again you will see it in my WhatsApp message, what the options were either we could get a procedure in which it was agreed that I would submit to it, [redacted]

[redacted] If the arbitration said that it was a legal procedure then I would submit to it, but obviously if it wasn't a legal procedure then the deficiencies in it could be sorted out properly, in private, following an arbitration as opposed to in the public glare in the Court of Session in the judicial review. But, I mean, the point I would make to you is this, when you take decisions such as that, the decision you are meant to take is not what people are going to say about you, or whether you are going to be criticised, or whether it might be embarrassing politically. The decision you are meant to take is whether it is in the interests of justice and therefore to establish whether a new policy untested, untried, unpublicised, and a policy which was still in terms of the public in secret, because it had never been publicised, beyond the intranet of the Scottish Government, might have been a better idea than the catastrophe which then has followed.

JH: And are you saying that whether something is politically possible or impossible is not a legitimate factor to be borne in mind?

AS: Well, again, I didn't ask her to intervene in favour of arbitration. I asked her to make it clear that she wasn't an obstacle to it. But whether- I mean, politicians will always bear politics in mind, Mr Hamilton, when you are First Minister your primary duty under the Code, and in my view to the people, is to make sure what you are doing is just, and right and proper, and can be defended on that basis. Not what you think the Daily Record or some other newspaper is going to say about you or whether you'll be criticised. Your defence of your actions doesn't lie on whether you are doing something which involves a friend or a party associate, or your greatest political enemy, it involves in what you are doing is right and proper, and we may have a different views on these matters, but if an opponent under these circumstances, which hopefully I wouldn't have been in, incidentally, but if it had come to me and said "look, you are embarking on policy which is being used against me and the policy is not just and there's a proposal for arbitration which I believe you are blocking" then I would have done as Nicola did and made that impression absolutely clear. But my, I would be governed by what is right and proper and just, not whether I was going to be attached about it.

JH: Well, I'm not suggesting that anybody was not motivated by that consideration, but..

AS: Well, I've seen a number of times in evidence to the Parliamentary Committee, Mr Hamilton, that people seem to suggest that certain things could or couldn't be done because of what the perception might be, and the criticism that might be attached to them, and I've seen that argument made by Nicola in her evidence. I don't think it is a good argument. Others may differ.

JH: Okay. I don't think it raises any issue under the Ministerial Code.

AS: No, but I was kind of responding to your question.

JH: Yeah, okay. No, that's fine. So just, then I want to go on to a couple of other questions. I suppose the main question is the argument that, which is based I think on the principle that, and you've based it on the principle, it's stated in paragraph 2.13 of the Ministerial Code and

at paragraph 1.2 of the Code: the overarching duty on Ministers to comply with the law, and you have put forward an argument based on that to suggest, I think, that the way in which the legal proceedings were handled was a breach of the Ministerial Code. Well, first of all, taking account of the role of the Lord Advocate, of the Law Officers, which fills a full two pages of the Ministerial Code and makes it clear that the Law Officers have Ministerial responsibility for the provision of legal advice to Ministers on all matters relating to the law of Scotland. I'm not sure how can you justify your argument in the circumstances where [redacted] ed act

AS: Because, on the one hand we've got the, probably the greatest expert in Scotland, Roddy Dunlop on such matters, and Christine O'Neill who was, of course, the standing counsel to the Scottish Government, she wasn't somebody just hired for this, she was the standing counsel, and as we now know from the advice that's been published in the last few days and again the advice that has been published today, that from October the 31st, if not sooner, they realised and recognised that the Government were likely to lose in court. And that wasn't an opinion, as you will have noticed from the legal advice that's been published now, which was stated in mild terms. I mean the phrase from the 31st of October is "we shouldn't defend the indefensible". And that advice gets progressively more definite as time goes on. And you've got much more experience of these things than I do, Mr Hamilton, but I've never read legal advice or encountered legal advice of that degree. I mean any counsel always will caveat their advice by saying the balance of probability or various other things. In this case, the advice becomes progressively more alarming for the Government in saying the full extent of the position by December the 5th, I think, the Government, there's an express recommendation to settle the review. By the 19th there is a memo which is, an opinion rather which is jointly written which expresses the view that the two counsel have been misled by their client across a range of facts. That the averments that have been placed in court aren't true, that the court and the opposition, that's myself, and my team, had been misled and that they would be failing in their professional responsibilities not to warn the Government that the case was approaching the unstateable. Now, I heard in Nicola's evidence to say that in, for example, early December the case was still stateable, but you know a stateable case is not the criteria on which you judge the lawfulness of a policy, a stateable case is the bar by which an advocate can responsibly go into court without disavowing his or her vows as an advocate. I mean, to say a case is stateable is the lowest possible bar of continuing, not one that I recognise in any legal action that I sanctioned as First Minister, and most certainly not, incidentally, on the minimum pricing example which was given by Nicola, which was totally different. The minimum pricing case was won in every court that it was judged in and we never had legal advice- because it was in my term as First Minister- we never had legal advice saying anything other than we were hoping to win the case as indeed we did in Scotland and in Europe. But anyway, it was a matter of public policy not a case like this. I mean it's, but if that is the bar by which governments pursue legal action, that their case can be stateable, that they can actually get into court without being laughed out of it, then that's a very very low bar indeed, certainly none that would be recognised in the Ministerial Code. [redacted] the advice that has been published is from external counsel, the people who were given the responsibility of discharging the case for the Government. There's references to what the Lord Advocate

might have thought about it but even if I were to accept the arguments that there is some advice somewhere saying the Lord Advocate or the Solicitor General take a different view, or think the case should be continued for other reasons there is a very very disturbing sequence of emails between the 17th and the 19th of December where external counsel say that this case can only be continued if there are other reasons, in other words again we are back to the suggestion from external counsel that the argument against settling, conceding the case are not being pursued because of a matter of law and justice and what's right and proper under the law, but because it might not look good for the Government, it might be embarrassing to lose the case. The phrase that Nicola used in her evidence the phrase that's "Trumpian", trumpet the case, and she said "I wonder who's going to do that". That is not how you judge things as an First Minister when you are given legal advice. You take the legal advice that is pertinent to the case in the round. The First Minister was an interested party in the case. The petition was being taken against the Permanent Secretary as the respondent, and the First Minister and other Ministers as interested parties. It's clear from all the evidence that, you know, she wasn't a bystander in any way, and it's also clear, I would submit, from the evidence that there were political considerations in the refusal to accept the advice of external counsel to settle the case. And finally I would say this. In her evidence session to the Scottish Parliament she agreed, I think it was with Mr Murdo Fraser when he read out the legal advice from external counsel from the 19th of December 2018 that having received advice such as that it would be wrong to steam on ahead with the case. The point is, Mr Hamilton, the Government did steam on ahead after the 19th of December. They went to two meetings, into two full hearings of a Commission in Diligence and Documents, and then a private hearing, a procedural hearing after Christmas. Now, after I heard that in evidence I asked my legal team to give me a note of how much public expenditure was incurred after the 19th of December, after Nicola in her evidence suggested it wouldn't be right to steam on ahead. And the answer was more than a six figure sum. So even at the de minimus now, even with what is accepted, there was still a vast waste of public expenditure, against counsel's advice, even when it's now accepted it would have been wrong to continue, continue it did, and vast expenditure was incurred. I think on any terms that calls into question the relevant passage of the Ministerial code.

JH: Well, it may be that these further documents throw some more light on this…

AS: Are you getting a "right channel connected" Mr Hamilton?

JH: Sorry, can you hear me?

AS: I'm getting in my ear "right channel connected", I'm not sure if you are getting that, can you hear me alright?

JH: I can hear you perfectly.

AS: Ah, fine, thank you. But I'm very happy, this is the area perhaps that it might be, given that the latest documents were only received this afternoon, it might be right to drop you a note to elaborate on this point.

JH: Well it may be interesting, I don't know what's in the new documents. I mean, what would you say to a case, and I've come across these, where a Government feels that their case is right in principle, and an important one to fight, but they are told by their counsel there is a very high risk that they're going to lose?

AS: There can be cases in public policy like that. The example, as I said to you, Nicola gave was the minimum pricing case. It bears no comparison whatsoever. In the minimum pricing case the Government- I mean I was the First Minister at the time- we won the case in Scotland, at the Court of Session, it was appealed to the
Europe by the Scottish Whisky Association. We won the case in Europe, and then the Scots Whisky Association were refused permission to appeal to the Supreme Court. [redacted] We had a perfectly strong case which was vindicated in court, and at no stage did I ever, on that or any other matter have as my criteria for continuing with a case and wasting vast sums of public money that the case was stateable. As I said stateable, as you are well aware, much more aware than I am, is the lowest possible criteria, and not the one, which in my reading at least, and the advice I followed, was one justified in the Ministerial Code, where you take range of advice that you are given and act in the public interest about what's right and what's wrong. The consequences of the Government not settling were vast expenditure in public money, the consequences as the Lord Advocate seemed to indicate in his evidence that he thought it might be interesting to get a ruling from the court, well there are certain issues where it is interesting to get clarity from the court, but this is an issue that involved individuals, people. Myself, two complainants, in particular. It's not an academic exercise to find out and get clarity from the Court over a point of law. It's a matter when you are told in no uncertain terms what the legal position is, that the public interest, not just in expenditure but what's right and proper is to follow it

JH: And I know at one stage, and because we haven't seen everything it's not clear maybe, but there were 8 different grounds on which your case was brought. But because the matter was abandoned then, we actually have no finding on 7 of them I think, 6 anyway. Which is rather unfortunate...

AS: I would argue 6, because you will have looked at the interlocutor and you see the case wasn't just about apparent bias from the, it was settled not just on the apparent bias of the Investigating Officer, it was also ruled procedurally unfair. Not unlawful, because it's procedurally unfair and apparent bias of the Investigating Officer. And I know that Counsel... sorry, you were going to ask?

JH: I was just going to say there are, for example, you raised a very interesting argument in relation to Article 6 of European Convention on Human Rights. And it would have been very helpful to have had the Scottish Courts answer on that point, for instance, and whoever is looking at the procedure, and amending it and drawing it up, they don't have the answer to how that would be decided, just as an example. You raised other issues as well.

AS: Well the duty on Scottish Ministers, and I'm not sure about Northern Ireland, but the duty on Scottish Ministers because of the nature of the Scotland Act is that you have to ensure that every action, not just every piece of legislation, every action is complaint with the

Convention. And the reason for that, Mr Hamilton, is that back in 1998, I remember, the European Convention was very much in vogue and generally supported across the political spectrum. We've changed a bit since then. And it was actually put into the Scotland Act as an integral part of it. So you have to ensure that every action you take as a Minister, I think I mentioned this on one of my WhatsApp messages to Nicola, not just every piece of legislation, but every action you take is compatible and Convention complaint. But you're meant to do that in advance or when you take them, you're not meant to end up in the Court of Session to have them knocked down, and I would say that, you know, when you're introducing a policy the responsibility on those who introduce it, and those who sanction it, and those in whose name it's introduced, is to make sure that you give a proper robust assessment of the legality and the Convention compliance within the policy before you introduce it, not afterwards, because a private citizen has to go to the Court of Session. I mean, if we decided public policy and workforce policy in that manner we would never be out of court.

JH: Yeah, but there are many examples where Governments get it wrong, they think are in compliance with the Convention and when they get to the court in Strasbourg they discover they are not, but it doesn't mean…

AS: Well thankfully, Mr Hamilton, I can say that, in my term of office, and I'm sure this was good luck rather than good judgement, we didn't actually lose a Convention, I think I'm right in saying that the only judgement that we lost in Convention terms was one of my predecessors, called the Cadder judgement, which was about in-cell facilities in prisons in Scotland, and but it was something of a legacy issue, because they weren't all at that stage complaint with Convention rights in that direction, and I think the Cadder judgement was also about access to solicitors for accused so that's the only case I can think of, or there were perhaps only two cases that you would say. So it doesn't happen, if I may say so, that often, and it doesn't happen very often that a Government's policy is declared unlawful, procedurally unfair, and tainted by apparent bias. This is not an everyday occurrence.

JH: Okay, well I think you've given a very eloquent exposition of your thinking on the subject, and I will certainly think about what you are saying.

AS: Would it be helpful, on that subject, because I'm aware that these remarkable pieces of legal advice have just come in. And when I said, when I gave my evidence to the Committee and when I've spoken about these things hitherto, there was some scepticism, I think, among many people about the, what, whether, I think I said that my belief was that the Government had been advised that on the balance of probability their policy was likely to fail. In fact, as we now know the external legal advice from the Dean of the Faculty and their standing counsel went far far beyond that, and certainly, in my experience, certainly never when I was in office and not that I know of, have I ever read advice couched in terms that we've seen over the last few days. What worries me most about this is that counsel quite clearly from the documents that have been published believed they had to argue against political considerations overruling their advice. That seems to me very disturbing and perhaps reflects on whether you should take decisions based on what people might think about it, or what you should take and this characteristic, decisions based on the legal advice you're getting

from the people you have charged with public money to give you that advice, in this case the people defending the Government in court.

JH: I think the distinction, there is clearly a distinction between a case where you think that what you are doing is correct in principle even though you think there's a risk the court might take a different view, and a case where as you say, you effectively have no basis for running it, or very little basis. But, look, I'll reflect on what you've said on this.

AS: There was one thing, one other argument that I think I made to you in one of my submissions, which, the contention by Nicola, which I dispute for the reasons you know about, and we don't need to go in to it, that the first she became aware of the existence of an investigation into the Petitioner's conduct was in April 2018, when the Petitioner made her so aware. The first she became aware of the existence of the investigation into the Petitioner's conduct. That was made in the pleadings in the Court of Session not just to Parliament in terms in January 2019, that was made in the pleadings in the Court of Session in December 2018, and if you have got the time to look at the position of external council you will see one of the things which Christine O'Neill and Roddy Dunlop were so alarmed about was the fact, that not in that regard because they didn't know about that, they put that forward in good faith, in other things, for example the role of the Investigating Officer, the evidence which had been supressed, the emails, the documents which had been hidden from them, as well as the court, that one of the things which obviously exercised them in terms of their professional integrity was that the pleadings that had been made in court, to the Court of Session by the Scottish Government, the pleadings were clearly inaccurate, were wrong, were not based in fact. And obviously any advocate, not just one representing a Government, would be extremely concerned by that positon. I merely draw your attention to the fact that among these pleadings, not the ones that they knew were wrong, it was ones made, and the only person who could have made that, and put it into the pleadings, because she was an interested party, was the First Minister. That to me is a significant consideration.

JH: Well, I mean are you saying she personally settled these pleadings?

AS: Well, yes, yes I am, the only person who could put that into the pleadings, and in fact you'll find this verified in the legal documents that have been distributed, because at various points, well [redacted] But the only person who can verify that pleading, and would be asked, and who would be personally responsible for making sure it was true, is the First Minister. You can't put in a pleading saying when the First Minister was aware of the existence of an investigation unless you get the First Minister's backing, like any other part of pleadings which involve an individual, there's no question that the First Minister had to sign that off, either personally or through her Chief of Staff, otherwise no advocate would ever have put it in pleadings. These are pleadings before, I mean, it's your area of expertise sir, these are pleadings before the highest court in Scotland.

JH: Okay, well...

AS: Which as the advocates indicated in their emails that it's rather important that the Court of Session can rely on the Scottish Government to be truthful…

JH: But it would be useful to give me chapter and verse on that as well.

AS: Of course. I apologise, I thought I had actually written to you specifically about that but if I include it in the legal submission would that be ok?

JH: Yes. Sure.

AS: So you'll get that Monday or Tuesday.

JH: Whatever information you have about it, I mean it may be something that I missed, to be honest there are a lot of documents in this.

AS: I have great sympathy with you and the amount of documents sir.

JH: Is there anything else want to mention, because we've more or less covered the points I wanted to raise with you ?

AS: No, there's nothing that can't be covered in a submission on this legal stuff, which I will get to you Monday or Tuesday at the latest, if that's ok?

JH: If you can do it as soon as you can, because.

AS: If I say Tuesday morning at the very latest?

JH: That would be alright, that would be fine, we can deal with it then. Okay, well thank you very much.

AS: Alright, goodbye.

From: Rogers D (David) (Constitution and Cabinet Director) <David.Rogers@gov.scot>
Sent: 09 March 2021 19:13
To: Deputy First Minister and Cabinet Secretary for Education and Skills <DFMCSE@gov.scot>
Cc: Cabinet Secretary for Finance <CabSecFinance@gov.scot>; Lord Advocate <LordAdvocate@gov.scot>; Solicitor General <SolicitorGeneral@gov.scot>; Permanent Secretary <PermanentSecretary@gov.scot>; Fraser L (Lesley) <Lesley.Fraser@gov.scot>; Thomson KAL (Ken) (Director-General) <Ken.Thomson@gov.scot>; Macniven R (Ruaraidh) <Ruaraidh.Macniven@gov.scot>; Chief Financial Officer <cfo@gov.scot>; Rennick NS (Neil) <Neil.Rennick@gov.scot>; Troup C (Colin) (Dr) <Colin.Troup@gov.scot>; [redacted] St Clair JB (John) <John.StClair@gov.scot>; McAllister C (Colin) <Colin.McAllister@gov.scot>
Subject: OFFICIAL - SENSITIVE: INDEMNITY FOR THE INDEPENDENT ADVISER ON THE MINISTERIAL CODE

Official – Sensitive

PS/Deputy First Minister

Copy as above

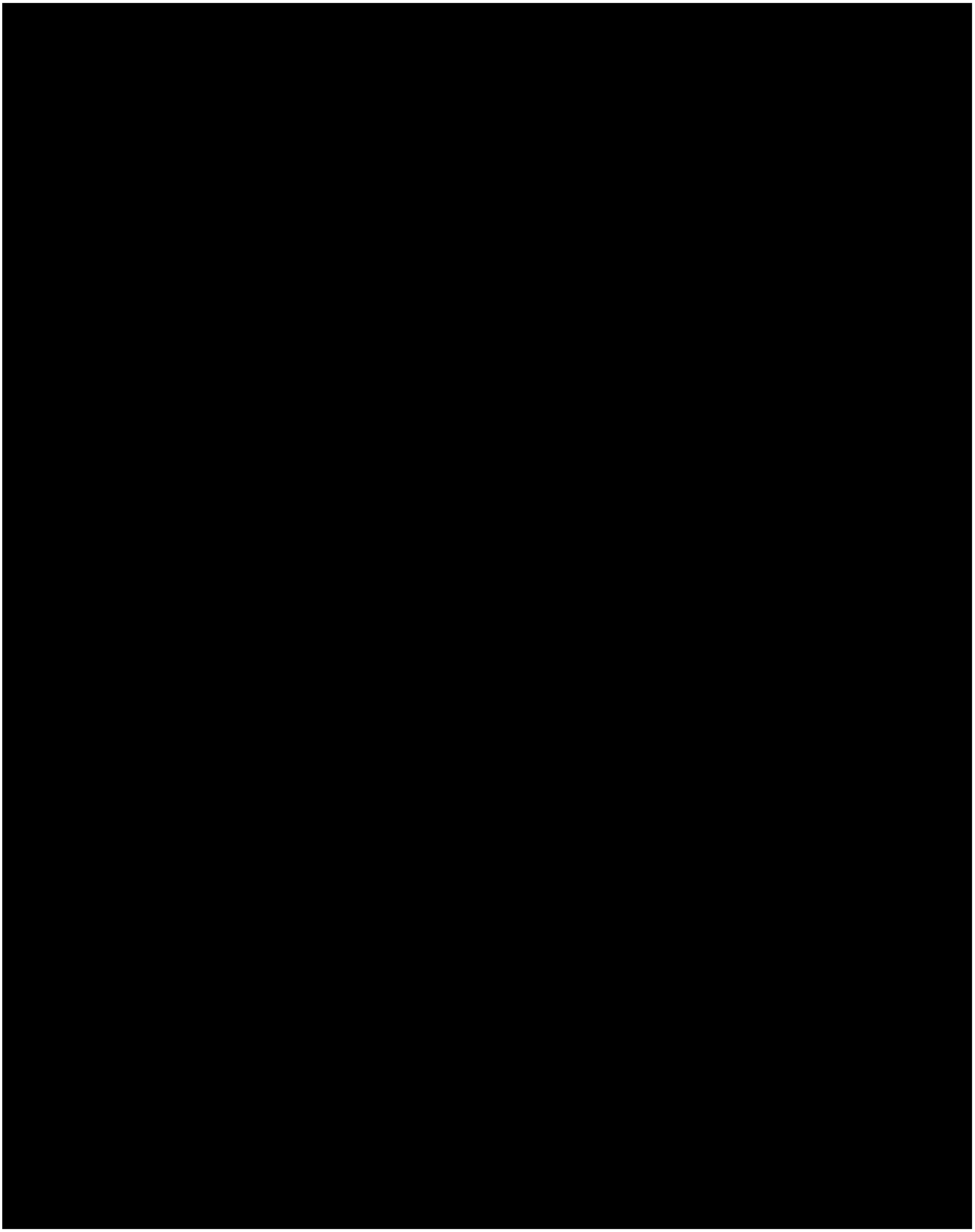
I attach a submission for Mr Swinney's attention.

David Rogers
[redacted]

David Rogers
Director, Constitution and Cabinet | The Scottish Government | 4 N.04, St Andrew's House, Edinburgh, EH1 3DG | [redacted] | E: david.rogers@gov.scot

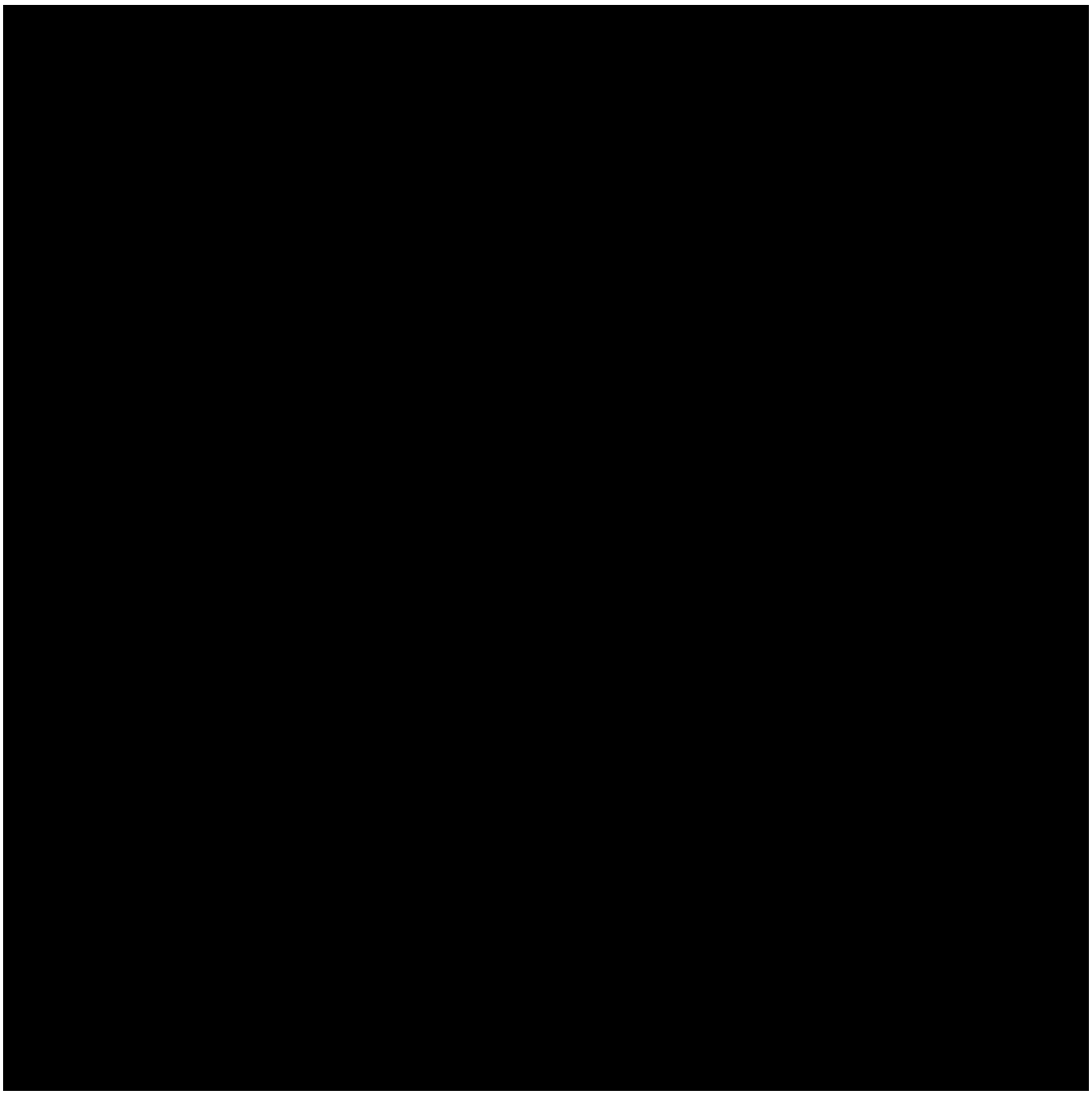
From: David Rogers
Director, Constitution and Cabinet
9 March 2021

Deputy First Minister



[redacted]

Copy List:	For Action	For Comments	For Information		
			Portfolio Interest	Constit Interest	General Awareness
[redacted]			[redacted]		[redacted]



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Sent: 09 March 2021 19:13
To: Deputy First Minister and Cabinet Secretary for Education and Skills <DFMCSE@gov.scot>
Cc: Cabinet Secretary for Finance <CabSecFinance@gov.scot>; [redacted] Permanent Secretary <PermanentSecretary@gov.scot>; Fraser L (Lesley) <Lesley.Fraser@gov.scot>; Thomson KAL (Ken) (Director-General) <Ken.Thomson@gov.scot>; [redacted] Chief Financial Officer <cfo@gov.scot>; Rennick NS (Neil) <Neil.Rennick@gov.scot>; [redacted] Hare M (Mark) <Mark.Hare@gov.scot>; Whyte R (Rebecca) <Rebecca.Whyte@gov.scot>; [redacted] McAllister C (Colin) <Colin.McAllister@gov.scot>
Subject: OFFICIAL - SENSITIVE: INDEMNITY FOR THE INDEPENDENT ADVISER ON THE MINISTERIAL CODE

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PS/Deputy First Minister

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I attach a submission for Mr Swinney's attention.

David Rogers
07795 618421

David Rogers
Director, Constitution and Cabinet | The Scottish Government | 4 N.04, St Andrew's House, Edinburgh, EH1 3DG | T: 07795 618421 | E: david.rogers@gov.scot

From: David Rogers
Director, Constitution and Cabinet
9 March 2021

Deputy First Minister

INDEMNITY FOR THE INDEPENDENT ADVISER ON THE MINISTERIAL CODE

Purpose

1. To seek clearance for an approach to providing an indemnity for the independent adviser, Mr Hamilton.

Timing

2. Routine.

Background

3. Mr Hamilton was appointed as the independent adviser who would lead on the First Minister's self-referral under the Ministerial Code. The appointment is unpaid.

4. Mr Hamilton has requested an indemnity against any civil proceedings that might emerge as a result of the preparation and publication of his report. We expect appropriate steps to be taken by Mr Hamilton to ensure that the report is compliant with the relevant court orders and other relevant legislation. Mr Hamilton has legal support to advise him. However, Mr Hamilton is concerned that, given the contentious nature of the issues, the report may result in some form of civil action, and that he might be exposed to costs resulting from that.

Policy on indemnities

5. It is set out in the Scottish Public Finance Manual (SPFM) that the Scottish Government indemnifies office holders and members of boards who have acted honestly and in good faith against personal civil liability incurred in the execution or purported execution of their functions, save where the person has acted recklessly. Relevant claims established against an office-holder or board member would therefore be met from funds provided by the Scottish Ministers. It should not therefore generally be necessary to issue formal written indemnities to relevant office-holders and board members in connection with personal civil liabilities. However, such indemnities may be provided by the Scottish Ministers on a case by case basis.

6. There is an obligation to obtain prior approval of Parliament unless an indemnity is authorised by statute or under £2.5 million. If it is between £300 thousand and £2.5 million there is an obligation to notify Parliament.

Provision of an indemnity to the Independent Adviser

7. [redacted]

[redacted]

9. Finance [redacted] officials have been consulted in the preparation of this advice and the approach has been agreed by [redacted] the Chief Financial Officer.

Recommendation

10. That I should send the attached draft letter to Mr Hamilton.

David Rogers
07795 618421

9 March 2021

Copy List:	For Action	For Comments	For Information		
			Portfolio Interest	Constit Interest	General Awareness
Cabinet Secretary for Finance [redacted]			x		X X
Permanent Secretary Ken Thomson Lesley Fraser [redacted] Jackie McAllister Neil Rennick [redacted] Rebecca Whyte [redacted]					

Mark Hare
Colin McAllister

DRAFT LETTER

Dear Mr Hamilton,

Indemnity from personal civil liability incurred in the execution of your investigation as Independent Adviser on the Ministerial Code

This letter confirms that, as regards your work as Independent Adviser under the Ministerial Code, you will be treated by the Scottish Government in the same way as an office-holder under Paragraph 18 of the Scottish Public Finance Manual.

Paragraph 18 of the Manual sets out that:

> Office-holders appointed by the Scottish Ministers and individual board members of bodies sponsored by the Scottish Government (including independent external members of board committees) who have acted honestly and in good faith should not have to meet out of their own personal resources any personal civil liability which is incurred in the execution or purported execution of their functions, save where the person has acted recklessly. Relevant claims established against an office-holder or board member will therefore be met from funds provided by the Scottish Ministers.

I hope this information is helpful.

Yours sincerely,

David Rogers

From: James Hamilton [redacted]
Sent: 10 March 2021 17:16
To: [redacted]@gov.scot>
Subject: Report [UNSCANNED]

Hi [redacted]

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Best wishes

James

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Draft 10 March further revised by JH

Report of the Independent Adviser on the Scottish Ministerial Code into the self-referral by the First Minister Ms Nicola Sturgeon into allegations that she breached the Code in respect of meetings and discussions with the former First Minister Mr Alex Salmond between 29 March 2018 and 18 July 2018 and related matters

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The Remit for the Investigation

The remit for the investigation

The remit for the self-referral to me by the First Minister under the Scottish Ministerial Code was set out as follows by the Deputy First Minister, Mr John Swinney, in a reply to a parliamentary question in the Scottish Parliament on 3 August 2020.

> "It has been alleged that the First Minister breached the Scottish Ministerial Code in that she failed to feed back the basic facts of meetings and discussions held with Alex Salmond to her private office as required by sections 4.22 and 4.23 of the Code. The meetings and discussions in question took place on:

29 March 2018 – Meeting between Ms Sturgeon and Geoff Aberdein, former Chief of Staff to Mr Salmond, Scottish Parliament
2 April 2018 - Meeting between Ms Sturgeon and Mr Salmond at Ms Sturgeon's home.
23 April 2018 - Telephone conversation between Ms Sturgeon and Mr Salmond.
7 June 2018 - Meeting between Ms Sturgeon and Mr Salmond at SNP Conference, Aberdeen.
14 July 2018 - Meeting between Ms Sturgeon and Mr Salmond at Ms Sturgeon's home.
18 July 2018 - Telephone conversation between Ms Sturgeon and Mr Salmond.

It is has been further suggested that, in light of those meetings, the First Minister may have attempted to influence the conduct of the investigation then being undertaken by the Permanent Secretary into allegations made against Mr Salmond under the Procedure for Handling of Harassment Complaints involving Current or Former Ministers ("the Procedure").

Scottish Ministerial Code

The key relevant extracts from the Code are:

1.6. Ministers are personally responsible for deciding how to act and conduct themselves in the light of the Ministerial Code and for justifying their actions to Parliament and the public. The First Minister is, however, the ultimate judge of the standards of behaviour expected of a Minister and of the appropriate consequences of a breach of those standards. Although the First Minister will not expect to comment on every matter which could conceivably be brought to his or her attention, Ministers can only remain in office for so long as they retain the First Minister's confidence.

1.7. Where he or she deems it appropriate, the First Minister may refer matters to the independent advisers on the Ministerial Code to provide him or her with advice on which to base his or her judgement about any action required in respect of Ministerial conduct. The findings of the independent advisers will be published.

Contacts with External Individuals and Organisations, including Outside Interest Groups and Lobbyists

4.22 Ministers meet many people and organisations and consider a wide range of views as part of the formulation of Government policy. Meetings on official business should normally be arranged through Private Offices. A private secretary or official should be present for all discussions relating to Government business. Private Offices should arrange for the basic facts of

formal meetings between Ministers and outside interest groups to be recorded, setting out the reasons for the meeting, the names of those attending and the interests represented. A monthly list of engagements carried out by all Ministers is published three months in arrears.

4.23 If Ministers meet external organisations or individuals and find themselves discussing official business without an official present – for example at a party conference, social occasion or on holiday – any significant content (such as substantive issues relating to Government decisions or contracts) should be passed back to their Private Offices as soon as possible after the event, who should arrange for the basic facts of such meetings to be recorded in accordance with paragraph 4.22 above.

The First Minister has, accordingly, referred the matter for consideration by one or both Independent Advisers for advice on which to base her judgement about any action required in accordance with the Code.

Remit

The remit for the referral is to:

Review any relevant documentation relating to the meetings and discussions listed above.
Interview any Minister or official of the Scottish Government, including Special Advisers, who may have any knowledge of the facts and content of the meetings and discussions, to assess whether the Ministerial Code is engaged and, if so, whether the terms of the Code have been complied with.
Interview any relevant person outwith the Scottish Government, including the former First Minister, Alex Salmond, who may have information relating to the facts and content of the meetings and discussions.
Determine if there is any evidence that the First Minister attempted to use information discussed during those meetings and discussions to influence the conduct of the investigation being undertaken by the Permanent Secretary into allegations made against Mr Salmond under the Procedure.
Provide the Deputy First Minister with a report setting out the findings and conclusions with regard to:

i. whether the Ministerial Code is engaged regarding the meetings and discussions;

ii. whether there has been any breach of the Code and the nature of any such breach; and

iii. if a breach has occurred, advice on the appropriate remedy or sanction.

The Independent Adviser is further invited to consider and offer views on whether the Ministerial Code might need revision to reflect the terms of the Procedure and the strict limitations it places on the involvement of the First Minister in cases which fall to be considered under the Procedure.

Timing

The Independent Adviser is invited to commence the investigation and submit a report as soon as possible."

In accordance with the remit I sought and received written observations from persons who included the following: the First Minister, Ms Nicola Sturgeon; the former First Minister, Mr Alex Salmond; the permanent Secretary to the Scottish Government, Ms Leslie Evans: Ms Liz Lloyd, Chief of Staff to the First Minister, Mr Geoffrey Aberdein, a former Special Adviser and Chief of Staff to the former First Minister, Mr Duncan Hamilton, Mr Kevin Pringle, Mr David Clegg, Mr Stuart Nicholson and Mr Peter Murrell. All of these witnesses gave me full co-operation and answered follow-up questions where necessary. I carried out follow-up interviews with a number of the witnesses where I considered clarifications were required. One person who had attended the first meeting between the First Minister and the Deputy First Minister declined to make a statement, but since he had attended that meeting in the capacity of a legal adviser to Mr Salmond this is unsurprising. I had, in any event, no power to compel any person to cooperate with the investigation

Report and Findings

1. Brief summary of the factual background

1.1. The principal factual background to the questions raised in the remit is as follows:

Mr Alex Salmond resigned as First Minister of Scotland on 18 November 2014 and was succeeded as First Minister the following day by Nicola Sturgeon.

1.2. In December 2017 the Scottish Government adopted a new procedure entitled "Handling of harassment complaints involving current or former ministers" (subsequently referred to in this report as the Procedure) which is described as an "internal procedure agreed in December 2017 and published in February 2018 on the Scottish Government intranet". Since 23 August 2018 it is also published on the Scottish Government's website at https://www.gov.scot/publications/handling-of-harassment-complaints-involving-current-or-former-ministers/.

1.3. By a letter dated 7 March 2018 Mr Alex Salmond was informed that an internal investigation had been commenced under the Procedure on 17 January 2018 in respect of two formal complaints made by civil servants about his behaviour during his time as First Minister.

1.4. [redacted] Mr Geoffrey Aberdein, former Chief of Staff to Mr Salmond, met [redacted]. Mr Aberdein says that [redacted] informed him that complaints had been made against Mr Salmond and named one of the complainants. [redacted] disputes this. Having discussed the matter with other contacts Mr Aberdein decided to inform Mr Salmond of the allegations and did so by telephone later that week. By that time Mr Salmond had already received the letter of 7 March informing him that complaints had been made.

1.5. On 29 March 2018 there was a meeting between the First Minister and Mr Aberdein, which took place in the First Minister's office in the Scottish Parliament.

1.6. There then followed a series of meetings and telephone conversations between the First Minister and Mr Salmond.

1.7. The first of these meetings took place in the evening of 2 April 2018 at the First Minister's home. Mr Aberdein and Ms liz Lloyd, Chief of Staff to the First Minister, were present as well as Mr Duncan Hamilton who was acting as a legal adviser to Mr Salmond.

1.8. On 23 April 2018 there was a telephone conversation between the First Minister and Mr Salmond.

1.9. On 23 April 2018 there was a second telephone conversation between the First Minister and Mr Salmond.

1.10. On 7 June 2018 there was a second meeting between the First Minister and Mr Salmond during the Scottish National Party Conference which took place in Aberdeen.

1.11. On 14 July 2018 there was a third meeting between the First Minister and Mr Salmond which took place at the First Minister's home.

1.12. On 18 July 2018 there was a third and final telephone conversation between the First Minister and Mr Salmond.

2. The adoption of the Procedure for handling complaints against Ministers and former Ministers

2.1. In December 2017 the Scottish Government adopted a procedure entitled "Handling of harassment complaints involving current or former ministers." It is described as an "internal procedure agreed in December 2017 and published in February 2018 on the Scottish Government intranet" and will be referred to as "the Procedure" in this report. Since 23 August 2018 the Procedure is also published on the Scottish Government's website at https://www.gov.scot/publications/handling-of-harassment-complaints-involving-current-or-former-ministers/.

2.2. The Procedure was adopted following a process of consultation involving the First Minister, the Scottish Cabinet, the Permanent Secretary and other senior officials of Scottish Government, the Chief of Staff, the Scottish Parliament, the Scottish Government's People Directorate, as well as the Scottish Government's Directorate for Legal Services. The draft was also shared with the Cabinet Office of the United Kingdom Government and the Scottish Government Trade Unions. The process of developing this policy and the consultations involved are described in some detail in a document entitled *Response to Committee of the Scottish Government Handling of Harassment Complaints* (the Response Document) dated June 2020 prepared in response to a request from the Scottish Parliament's Committee on Scottish Government Handling of Harassment Complaints.[1]

2.3. The Response Document includes the following explanations of the motive behind the policy review:-

> Tackling bullying and harassment, and ensuring that the Scottish Government is a more diverse and inclusive organisation, sits at the heart of the Scottish Government's organisational strategy, as it did at the time covered by this statement…
>
> The 2016 People Survey[2] continued to show that a significant minority of staff (10%) said they had experienced bullying or harassment, but combined with the very low number of formal complaints raised[3], this suggested a possible lack of awareness of or confidence in existing processes and procedures. This led to the appointment in spring 2017 of a Director to champion work to tackle bullying and harassment within the

[1] Response to Committee of the Scottish Government Handling of Harassment Complaints (Response Document) see
: SP+SGHHC1+Phase+1+Written+Statement+19+June+2020.pdf (www.gov.scot)
[2] https://www2.gov.scot/Topics/Research/by-topic/public-services-and-gvt/Employee-Survey/PeopleSurvey-2016
[3] https://www.gov.scot/publications/foi-17-02235/

organisation. The focus at that time was understanding and addressing the cultures that can allow bullying and harassment to occur and to raise awareness about the drivers for positive and inclusive cultures across the organisation.[4]

A wider societal focus on sexual harassment and sexual abuse had been increasing at the same time, and in early October 2017 reactions to sexual abuse allegations against Harvey Weinstein brought widespread exposure to the #Me Too movement, which was seeking to tackle sexual harassment and abuse by making the scale of the problem clear. A number of allegations of sexual harassment and assault were also reported in Westminster and the Scottish Parliament during October and November 2017. These issues were a matter of considerable concern across Government and the Parliament, as well as among individual MSPs, and the public at large.[5]

2.4. The review process identified a gap in the then existing procedure of dealing with sexual harassment claims, that is, that there was no mechanism for dealing with historic claims against former Ministers. This gap is described in the Response Document as follows:-

19. The review process in 2017 identified that while options were available to consider potential sexual harassment complaints about serving Ministers, no such option was available in respect of former Ministers. Those involved in the review process identified that there was a gap in the coverage in terms of having a procedure that could be deployed should any historical complaints arise in Scotland. It was recognised that a number of the allegations that had emerged at Westminster related to the actions of former Ministers during their time in office.

20. On 4 November 2017, during this review process, a Scottish Government Minister resigned his Ministerial post, following allegations made from outside the Scottish Government about his personal conduct. This example reinforced for the Scottish Government the importance of making sure that it had policies and procedures in place which were capable of responding appropriately to such allegations should they arise within the Scottish Government.

21. Following the identification of that gap in the overall framework, work was put in hand to determine the most effective way to fill it…As a result, Scottish Government officials began work on the development of a new procedure that could be applied in respect of former Ministers. The first version of the procedure was created on 7 November, which was the beginning of an iterative and collaborative drafting process. In the course

[4] Response to Committee of the Scottish Government Handling of Harassment Complaints, paragraph 4.
[5] Ibid., paragraph 5

> of the drafting of that procedure it was decided to broaden its scope to also include serving Ministers[6] so that there would be a single procedure that could be applied in respect of harassment complaints involving Ministers, whether current or former. This was also consistent with existing plans to review Fairness at Work. Later, following a view from the First Minister and Permanent Secretary, the procedure was amended to cover all forms of harassment, not just sexual harassment.[7]

2.5. It appears that its drafters did not consider that there might be any legal obstacle to applying the Procedure, designed and described as an internal Scottish Government procedure, to former Ministers who were no longer in a contractual or statutory relationship with Scottish Government and in respect of whom the previously existing harassment complaints procedure had already expired at the time of their retirement. I have not seen any legal advice which may have been provided to Scottish Government at the time but we do know that according to the Response Document the Scottish Government's lawyers were consulted as part of the approval process of the Procedure.

2.6. However, when complaints were laid against the former First Minister, Mr Alex Salmond, he disputed the right of Scottish Government to apply the Procedure to him and ultimately sought a judicial review against it. Among the objections which he raised to the Procedure was the claim that he could not, as a former office-holder, legitimately have been made amenable to a disciplinary procedure which had been introduced as an administrative act without any statutory or other legal basis. He challenged the retrospective effect of the Procedure. Mr Salmond also alleged procedural unfairness in the operation of the Procedure. These issues are further addressed in Chapter in whch I discuss Mr Salmond's claim that the manner in which Scottish Government defended the case which he brought amounted to a breach of the Ministerial Code on the part of the First Minister.

2.7. It not necessary for the purposes of my remit for me to express a view on the merits of any of Mr Salmond's claims. These were matters of Scottish law which ultimately only the Scottish courts could have decided and to an extent did decide.

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[6] https://secure.objectiveconnect.co.uk/share/9456-dd30-0a6c-46a6-bf88-64e2-fb7a9ff9/document/8a6f-68e1-b8b4-41c7-a936-2a01-8aa7-57ea

[7] https://secure.objectiveconnect.co.uk/share/9456-dd30-0a6c-46a6-bf88-64e2-fb7a9ff9/document/e6e3-41bf-1320-4cf0-94de-6702-045d-7286

2.8. I understand that so far as concerns the future of the complaints procedure in respect of former Ministers and any amendments that may be required or thought desirable in the light of the failed disciplinary proceedings against Mr Salmond a separate enquiry led by Ms Laura Dunlop QC is preparing a report.

2.9. Any questions concerning any political responsibility for the events which occurred in relation to the adoption of the Procedure are matters for the Scottish Parliament and I do not express any opinion on these.

2.10. My brief is to enquire into whether the First Minister was in breach of the Ministerial Code. It has been made clear that in this I am not confined to the specific question of whether paragraphs 4.22 and 4.23 of the Code were breached but am expected to enquire whether any breach of the Code has been committed by the First Minister regarding her meetings and discussions with Mr Salmond between 29 March 2018 and 18 July 2018.

2.11. I can find nothing in the conduct of the First Minister in respect of the introduction of or her observance of the Procedure which could be considered to be a breach of the Code. The Response Document has set out the reasons for the introduction of the Procedure. In my opinion those reasons demonstrated a proper concern for the objective of strengthening the procedures for dealing with cases of harassment and bullying, especially sexual harassment, and it was perfectly proper and appropriate for the First Minister to lead this process and to give it every support possible. The process was supported by advice from the most senior Scottish Government officials, including the legal department, as well as experts in the area of human resources and the handling of complaints. In my opinion the First Minister was entitled to rely on the advice she received. If there was any error in that advice- and I offer no opinion on that question- she cannot be regarded as personally in breach of the Ministerial Code because she relied on advice which was not correct. I accept the First Minister's evidence that at the time the Procedure was adopted she was not aware of any complaints or impending complaints against Mr Salmond.

2.12. A key principle in the Procedure is to avoid any risk of political interference in complaints and in particular to exclude the First Minister from any involvement in a complaint against a former Minister. In my opinion this is a legitimate and a proportionate objective of the Procedure.

2.13. As a result of this provision the First Minister excluded herself from being informed of or involved in dealing with any complaints against former Ministers which of course included the two complaints against Mr Salmond. In my opinion she was justified and acted properly in so excluding herself. Apart altogether from the provisions of the Procedure her long political association and personal friendship with Mr Salmond would have placed her in an invidious position and left herself open to accusations of bias and partiality had she allowed herself to become involved.

2.14. As already referred to above Mr Salmond has made a number of very serious allegations about the manner in which the complaints were investigated and dealt with including accusations of serious impropriety. I make no findings about the truth of any of these allegations which are still the subject of enquiries by the Committee on the Scottish Government Handling of Harassment Complaints of the Scottish Parliament. I accept the evidence of the First Minister that she had no involvement in these matters. I do not consider that the First Minister has any responsibility under the Ministerial Code for any shortcomings or wrongdoing in the behaviour of other persons, if there were any such shortcomings or wrongdoing, in relation to matters from which she has properly excluded herself from any involvement.

3. The operation of the Procedure

3.1. The Procedure envisages a number of options for Scottish Government employees claiming to be victims of harassment by serving or former Ministers. “An individual may choose to raise an issue involving a current or former Minister through a number of mechanisms. These may include a senior manager of your choosing, direct to HR or a Trade Union representative.” (Paragraph 1). Options available to the staff member include asking that their concern is acknowledged but without further action being taken, or indicating that they wish to make a formal complaint (Paragraph 2). It is emphasised that at all times the staff member or the Scottish Government itself is free to make a complaint directly to the police Paragraphs 2.1, 18 and 19.

3.2. In the event that a formal complaint of harassment is received against a former Minister, the Director of People will designate a senior civil servant as the Investigating Officer to deal with the complaint. That person will have had no prior involvement with any aspect of the matter being raised. The role of the Investigating Officer will be to undertake an impartial collection of facts, from,(sic) the member of staff and any witnesses, and to prepare a report for the Permanent Secretary. The report will also be shared with the staff member. (Paragraph 10).

3.3. If the Permanent Secretary considers that the report gives cause for concern over the former Minister's behaviour towards current or former civil servants the former Minister should be provided with details of the complaint and given an opportunity to respond. The former Minister will be invited to provide a statement setting out their recollection of events to add to the record. They may also request that statements are taken from other witnesses. If additional statements are collected the senior officer will revise their report to include this information and submit this to the Permanent Secretary and share with the staff member. The Permanent Secretary will consider the revised report and decide whether the complaint is well-founded. The outcome of the investigation will be recorded within the SG. The Permanent Secretary will also determine whether any further action is required; including action to ensure lessons are learnt for the future.(Paragraph 11).

3.4. For complaints involving a former Minister who is a member of the Party of the current Administration, the Permanent Secretary will inform the First Minister both in this capacity and in the capacity of Party Leader, of the outcome when the investigation is complete. The First Minister will wish to take steps to review practice to ensure the highest standards of behaviour within the current Administration (Paragraph 12).

3.5. The Procedure not only does not envisage the notification of complaints made against former Ministers to the First Minister prior to the completion of the investigation but is designed to preclude her from having any role in the process. The purpose of this provision is clearly to avoid either the reality or the appearance of political interference with the process of an investigation and how a complaint is dealt with, and to ensure the impartiality of the process. In my opinion this is a legitimate objective of the scheme.

3.6. Chapter 13 below deals in more detail with aspects of how the procedure was adopted and its operation in relation to Mr Salmond.

4. Mr Aberdein's meetings with [redacted]

4.1. There were meetings [redacted] between [redacted] and Mr Geoffrey Aberdein. He had been Chief of Staff (the most senior special adviser) from 2011 to December 2014 during Mr Salmond's time as First Minister and had left government service when Mr Salmond resigned as First Minister following the SNP's defeat in the independence referendum. [redacted]

[redacted]

[redacted]

4.4. [redacted] In the light of the "me too" movement, the increased focus on issues of harassment and in particular historic harassment, and the creation of a new procedure in government to address such issues, [redacted] wanted to ask Mr Aberdein if there was anything of that nature, from his time as Chief of Staff, [redacted]

4.5. [redacted] had remarked the previous week that the content of an official briefing provided for First Minister's Questions on the issue of sexual harassment had changed. Where the briefing had previously given a clear answer of "No" to the question of whether there had been any complaints about current or former ministers, and had stated that fewer than 5 cases of sexual harassment had been reported in the civil service, the colleague had noticed that both of those statements had been removed, and a line about concerns having been raised and being considered in line with procedures was now the line that should be used. That line could have referred to either staff or ministers and did not state that an investigation was underway into a former minister or into Alex Salmond.

4.6. [redacted] admits to having been aware at that time of growing rumours about Mr Salmond but claims at that stage not to have been aware of actual complaints made against him. [redacted]

4.7. Whilst discussing "me too" in general, [redacted] described asking Mr Aberdein whether he was aware of anything of concern. [redacted] said Mr Aberdein had no knowledge in relation to any other minister or former minister, but referred in general terms to two alleged incidents involving Mr Salmond. One was not sexual in nature.

4.8. In relation to the incident that was sexual in nature [redacted] said that Mr Aberdein gave a general description of the incident which he presented as being in his view a minor incident [redacted]. [redacted] says Mr Aberdein named the person concerned and that he did not seem to think it was a particularly significant incident. [redacted]

4.9. The conversation about “me too” also referred to a 13 November 2017 allegation on Sky News that female staff at Edinburgh airport had expressed concern to airport managers about what they regarded as “inappropriate behaviour” which was not specified in the Sky News report. Mr Salmond was reported as “strongly denying” any wrongdoing and nothing more was ever heard of this matter. The alleged Edinburgh Airport incident is further discussed in Chapter 5 below. [redacted] also referred to “jungle drums” in the media about Mr Salmond ever since the “me too” movement became prominent in October 2017. [redacted] had apparently been approached on a number of occasions by reporters to ask if there had ever been complaints about ministers in general and Mr Salmond in particular.

4.10. According to [redacted] account Mr Aberdein suggested that Mr Salmond would not cope well with such allegations, but said he wasn’t aware of anything further, and that he and Mr Salmond weren’t really in touch that much anymore and there was no other discussion on the issue.

4.11. Mr Aberdein in his account makes no mention of discussing any of these matters at [redacted]. He states that any reference to Alex Salmond in that first discussion was in the context of media coverage, particularly concerning Alex Salmond's decision to host a show on Russian television around that time which was the subject of much controversy. It is agreed by both participants that this subject was indeed discussed at this meeting.

4.12. Mr Aberdein, however, believes that [redacted]

[redacted]

[redacted]. This resulted from increasing concerns that whether or not there was currently any

investigation into Mr Salmond, it was possible there could be in the future as it was clear there could be something to investigate. [redacted]

4.15. [redacted] in order [redacted] indicated having a reason to believe there might be a complaint and it could be about Mr Salmond. [redacted] says that Mr Aberdein took this to mean that someone within government had given [redacted] information about a complaint and began to name individuals who might have done so. He suggested that he would phone some contacts who had previously worked with him who would tell him if there was a complaint. [redacted] adviser then denied knowing if there was a complaint and advised against making such calls as it seemed highly improper. If this is indeed what happened it would be hardly surprising that Mr Aberdein misunderstood what [redacted] was saying.

4.16. Mr Aberdein has a very different recollection of this meeting. He states that it is his clear recollection that [redacted] informed him that the Scottish Government had received official complaints about Mr Salmond. He says that [redacted] denied knowing the full details of the complaints but did tell him there were two individual complainers and named one of them. [redacted]

4.17. If it were a simple matter of comparing the two accounts it would not be possible to be completely certain whose account is correct, although Mr Aberdein's account is more straightforward than the rather complicated account given by [redacted] It is difficult to see how there can have been a misunderstanding as to what was actually said despite [redacted] elaborate explanation of how Mr Aberdein could have misunderstood what was said

[redacted]

[redacted] There is no evidence to suggest that The First Minister was aware of Mr Aberdein's version of events. If Mr Aberdein's account is correct I think it quite likely in any event that [redacted]

4.19. [redacted] well aware that under the Procedure harassment complaints were required to be treated in confidence and the First Minister was required not to be involved in any way in dealing with such complaints. It seems to me unlikely that the First Minister would have welcomed being potentially compromised by having rumour or gossip about such a complaint [redacted]

4.20. Mr Aberdein states that it was [redacted] Furthermore, what Mr Aberdein later told Mr Salmond turned out in fact to be correct.

4.21. The same day Mr Aberdein telephoned a former civil servant with whom he was friendly to tell her what had happened. She has made a statement confirming this. Later that day Mr Aberdein contacted Mr Kevin Pringle and Mr Duncan Hamilton by telephone to inform them of what he had been told about the complaints and to seek their advice about what he should do. They advised him to tell Mr Salmond. Mr Pringle has confirmed this account of what happened. Mr Hamilton initially declined to make a statement to me in view of his professional relationship with Mr Salmond but subsequently made a statement confirming Mr Aberdein's statement when released from his obligation of confidentiality by Mr Salmond. On 9 March and again on 11 March Mr Aberdein informed Mr Salmond by telephone of what [redacted] had told him. In view of

this corroboration that Mr Aberdein informed these four individuals of the conversation promptly I believe that Mr Aberdein's account of what was said by [redacted] about the existence of complaints and the identity of a complainer is credible.

4.21. [redacted] informed the First Minister about either the existence or the contents of the complaints, then the discussions between Mr Aberdein and [redacted] do not in my opinion constitute any breach of the Ministerial Code by the First Minister. [redacted] It remains the fact that the name which Mr Aberdein says was given to him by [redacted] was in fact the name of one of the complainers against Mr Salmond. [redacted]

5. When did the First Minister become aware that there were allegations against Mr Salmond?

5.1. The First Minister had been aware of the report on Sky News on 13 November 2017 referred to in paragraph 4.9 above. The report led to her having a "lingering concern" about Mr Salmond. She described it in an interview with me in the following terms:

> Round about the beginning of November 2017, just to put you in the picture, as you will recall this was at the time the whole world really was talking about the "me too" allegations, and, you know, organisations, governments, parliaments everywhere were trying to make sure they had the right processes in place. And this was around about the time we got a query from Sky News. By "we" I mean the SNP, not the Scottish Government, and that was about allegations that had been made by people at Edinburgh airport about conduct on the part of Alex Salmond.
>
> At that point I spoke to Mr Salmond about it. You know as far as I was aware at that point we were about to see a story appear on Sky News. I spoke to him the morning after we got the press query. He seemed pretty shaken by it at that point and said he had to get to the bottom of what it was. I spoke to him again later that day when he appeared much more bullish. But the following day the Permanent Secretary had indicated to me that he had been, or his lawyers, or a bit of both, I'm not sure, had been contacting people in the Scottish Government effectively asking people that he had

> worked with or that might have been with him going through Edinburgh Airport to back him up and that that has caused a bit of, some disquiet on the part of those people who had been contacted. And she asked me to ask him to stop that, which I did, and he said he already had all the information he needed. So I suppose the two things that just left me with a lingering concern was the fact that- and I struggle really to go beyond what I'm about to say to you- that his contacting people in the Scottish Government had appeared to almost stir something, a hornet's nest had been stirred kind of thing. That was the impression I got. And then he said something to me about, you know, you can't have stories like this running because you get one and the flood gates will open kind of thing, which he immediately qualified and said "oh no, that's not to say that I think there is anything there". But it was just the combination of things left me with a "is there something that is about to come forward about Mr Salmond's behaviour?" It wasn't something I thought about every day, or worried me everyday, but it was there in the back of my mind, and that I suppose is the back drop to what unfolded at a later stage.

5.2. Nothing more seems to have been reported about the Edinburgh Airport incident subsequently. As already discussed the First Minister says she first became aware of the fact that complaints against Mr Salmond under the Procedure had been made at the meeting on 2 April discussed below. I am not aware of any evidence which would disprove her account.

6. The meeting on 29 March 2018

6.1. Sometime following a call to Mr Salmond early in March Mr Salmond intimated to Mr Aberdein that he would like to have a meeting with the First Minister in person to set out his concerns about the Scottish Government's handling of the complaints. Mr Aberdein cannot be precisely certain when and how this was arranged but [redacted]

6.2. Thereafter, he believes he may have met [redacted]

6.3. Mr Salmond's account of how the first meeting came about is that he was contacted by phone on or around 9 March 2018 and again the following week by Geoff Aberdein, his former Chief of Staff. The purpose of the contact was to tell Mr Salmond [redacted]

6.4. Mr Aberdein said that at [redacted] had informed him of two complaints concerning Mr Salmond under a new complaints process introduced to include former Ministers and named one of the complainers to him. At that stage [redacted]

6.5. On receipt of the letter from the Permanent Secretary first informing Mr Salmond of complaints on 7 March 2018 he had secured Levy and McRae as his solicitors and Duncan Hamilton, Advocate and Ronnie Clancy QC as his counsel.

6.6. Mr Salmond and his legal advisers then identified what they considered to be a range of serious deficiencies in the Procedure. There was no public or parliamentary record of it ever having been adopted. In addition they believed that it contained many elements of procedural unfairness and substantive illegality. In their opinion there was an obvious and immediate question over the extent to which the Scottish Government even had jurisdiction to consider the complaints. In relation to former Ministers (in contrast to current Ministers) the Procedure offered no opportunity for mediation. The previous complaints procedure with which Mr Salmond had been familiar ('Fairness at Work') was based on the legislative foundation of the Ministerial Code in which the First Minister was the final decision maker. He wished to bring all of these matters to the attention of the First Minister. He did not know at that stage the degree of knowledge and involvement in the policy on the part [redacted] the First Minister [redacted]

[redacted]

[redacted]

6.8. On 29 March 2018 there was a meeting between the First Minister and Geoff Aberdein, former Chief of Staff to Mr Salmond, which took place in the First Minister's office in the Scottish Parliament. [redacted]

6.9 The First Minister described in an interview the circumstances in which the meeting was held. [redacted] Mr Aberdein had recently made contact to ask if the First Minister would agree to see Mr Salmond because there was an issue he wanted to talk to her about and he was in a state of great distress. [redacted] Mr Aberdein might be in the Parliament on 29 March. The First Minister appears to have been told that a civil servant colleague, somebody that Mr Aberdein had worked closely with was having a birthday celebration in the office and Mr Aberdein might be attending and if so he might try to grab a word with her. In fact Mr Aberdein did attend the Parliament that day.

JH: and then was he brought into your office? Was this just a discussion in the corridor so to speak?

FM: No no, we had been outside, just I don't expect you to visualise my office in Parliament but there is you know outside my office is where civil servants, special advisors work, so the member of staff whose birthday it was, civil servant, incidentally, we were outside there doing the birthday cake, singing happy birthday and Geoff had asked for a word and we went in to my office. Again, just to be clear, that would not have been the first time since Geoff had left as Chief of Staff, after I became First Minister that he had been in the office for something and had stepped in to my room for a chat. We were friends, you know, we are friends. And so he stepped into my room. From memory, I don't think was a particularly long conversation but it took place in my office.

JH: And did he give you any details at that stage about what it was about?

FM: Not, and this is where, so a combination of what I remember about this meeting and then what actually happened at my house on 2 April which we will come on to, make me very firm to the best of my recollection. Remember, this 29 March meeting had never been a significant event in

my mind. To the best of my recollection no he did not give me details, it was very much he wanted to get me to agree to see to see Alec. Alec and I were very close but we hadn't been speaking as much as normal, you know I was First Minister, he was off doing other things, he had lost his seat. He wanted me to see Alec and agree to a meeting. He was telling me that he was very worried about Alec, a lot of the discussion was about Alec's state of mind. You know he seemed to be indicating that he had never heard Alec be quite so upset about anything previously, that he was very distressed, that he thought he might be about to resign his SNP membership because of the nature of the issue he was upset about. I do believe that I, partly down to what he was telling me, partly down to the Sky lingering concerns, that it was in the realms of a potential concern or complaint about sexual misconduct. But, you know in my mind, and this was not unusual; Alec and I have worked incredibly closely for a long time, if I was being told he wanted to tell me something, in my mind I would have had to see him and hear what he wanted to tell me. That's basically, I had a general sense that it was something serious, something in the realms of a sexual complaint potentially, and he was very upset about it but I agreed, we didn't set the date of the meeting with Alec at that point, [redacted] But I was very clear, I was agreeing to see Alec as a friend, I was being told he was in a state of considerable distress, but also as the leader of the SNP, I was being led to believe he was on verge of resigning his membership of the party.

6.10. Mr Aberdein agrees that the initiative for this meeting came from his making an approach on behalf of Mr Salmond. However, he is quite clear that he came to the Parliament on 29 March for the purpose of meeting the First Minister. He says he had not come in for the purpose of attending the birthday party of which he had been unaware in advance of his arrival in the Parliament. However, he did join the celebrations. The First Minister also briefly joined the party and they stepped into her office to discuss Mr Aberdein's concerns. The First Minister says that during the conversation he raised an incident allegedly involving Mr Salmond. It appears that this may have been the incident discussed by the [redacted] and Mr Aberdein [redacted] concerning which it is disputed who said what to whom. The First Minister says that he spent most of the meeting seeking to persuade her to meet Mr Salmond. She does not believe the discussion took longer than ten minutes, though Mr Aberdein was in parliament for a longer period, socialising with former colleagues. Mr Aberdein says that he gave a brief account of the complaints against Mr Salmond to the First Minister. Contrary to what Mr Salmond told the Parliamentary Committee he did not give details of the conduct alleged to have been engaged in by Mr Salmond as he did not in fact know the details. He agrees the meeting was a short one lasting ten or fifteen minutes. The meeting on 2 April resulted from that short conversation.

6.11. I find it very hard to know what to make of this story about the birthday party. Mr Aberdein's account to me was very convincing. Equally the First Minister seemed both convinced by and convincing in her account. [redacted] t may simply have been [redacted]

7. The First Minister's failure to refer to the meeting of 29 March in her statement to the Scottish Parliament on 8 January 2019

7.1. On 8 January 2019 the First Minister made a statement to the Scottish Parliament concerning the Procedure for Handling Complaints Involving Current or Former Ministers following the conclusion of Mr Salmond's judicial review proceedings which the Scottish Government had withdrawn their opposition to.

7.2. In the course of that statement she disclosed for the first time the series of meetings and telephone calls in which she had held discussions with Mr Salmond as follows:-

> In the past, questions have also been raised about meetings that I had with Alex Salmond during the investigation, so I want to address that issue now. I met him on three occasions: on 2 April 2018 at my home in Glasgow; on 7 June 2018 in Aberdeen, ahead of the Scottish National Party conference; and on 14 July 2018, at my home. I also spoke to him on the telephone on 23 April and 18 July 2018. I have not spoken to Alex Salmond since 18 July. On 2 April, he informed me about the complaints against him, which—of course—in line with the procedure, the permanent secretary had not done. He set out his various concerns about the process. In the other contacts, he reiterated his concerns about the process and told me about proposals that he was making to the Scottish Government for mediation and arbitration. However, I was always clear that I had no role in the process. I did not seek to intervene in it at any stage—nor, indeed, did I feel under any pressure to do so.

7.3. The first and most obvious point to note is that this is technically an accurate list by the First Minister of the discussions she actually held with Mr Salmond. What has been suggested, however, is that the omission to

refer to the meeting with Mr Aberdein on 29 March during her statement to the Scottish Parliament created an incomplete and therefore misleading account.

7.4. It is agreed by all concerned in the meeting of 29 March that Mr Aberdein's purpose was to persuade the First Minister that she should meet Mr Salmond and to agree the necessary arrangements if she decided to do so. Clearly Mr Aberdein was simply a go-between and any information which he could convey was at second hand and would be superseded by whatever Mr Salmond could say at first hand if a meeting took place. The 29 March meeting, according to all participants, took no more than 10 or 15 minutes.

7.5. The First Minister recalls that shortly before the meeting of 29 March [redacted] and she understood that [redacted] the possibility of allegations emerging against Mr Salmond (see paragraph 6.9 above). This was around the same time that a former Scottish Government minister had resigned from the SNP over allegations against him, so such matters were topical. The First Minister understood that [redacted] - Mr Aberdein asked [redacted] to see if the First Minister would meet Mr Salmond, as there was a specific matter that he wanted to discuss with her. Mr Aberdein was said to have indicated to [redacted] that Mr Salmond was in a state of distress and considering standing down from the SNP. The First Minister says that she had not been aware of these contacts in advance. [redacted]

7.6. According to the First Minister's recollection at the 29 March meeting Mr Aberdein was primarily seeking to persuade her to meet Mr Salmond. Her account of the meeting is set out at paragraph 6.9 above. She recalls that the discussion covered the fact that Alex Salmond wanted to see her urgently about a serious matter, and she thinks it did cover the suggestion that that matter might relate to allegations of a sexual nature. The impression she had at this time was that Mr Salmond was in a state of considerable distress, and that he might be considering resigning his party membership. However, while she suspected the nature of what he wanted to tell her, it was Alex Salmond himself who told her on 2 April that he was being investigated under the Procedure and also gave the detail of the complaints against him. Mr Aberdein agrees that the meeting was a very brief one, lasting no longer than fifteen minutes. Mr Aberdein says that he relayed to the First Minister a broad summary of the complaints as

described to him by Mr Salmond. In describing what Mr Salmond had previously told him he refers to him in the course of a telephone call having "relayed to me, in very high level, a summary of the complaints." By "in high level" Mr Aberdein meant "not in detail"- indeed he made it clear to me that he was not aware of the detail. It is clear that the information given by Mr Salmond to the First Minister on 2 April was much more detailed than that relayed by Mr Aberdein on 29 March.

7.7. The First Minister says due to the nature of the information shared with her at the meeting of 2 April it was that meeting rather than the 29 March meeting with Mr Aberdein that has always been significant in her mind. She thinks that the assumption in her mind at the time of the 29 March discussion was that any issues of alleged sexual conduct against Mr Salmond would be related to the alleged incident at Edinburgh Airport which had been raised by Sky News in the query made to the SNP in early November 2017 and which concerned allegations of misconduct on the part of Alex Salmond and are discussed at paragraph s 4.9 and 5.1 above. She spoke to Mr Salmond about the allegations at the time. He denied them and, as it happened, Sky did not subsequently run a story about it. Since the identity of the individuals making the allegations was not made known to the SNP and they did not approach the SNP directly, there was no further action that it would have been possible for the SNP to take. However, even though Mr Salmond assured her to the contrary, all of the circumstances surrounding this episode left the First Minister with a lingering concern that allegations about Mr Salmond could materialise at some stage.

7.8. [redacted] recalled a reference by Mr Aberdein to an incident Mr Salmond had apologised for some time previously. However, this would have meant nothing to the First Minister as she had not been aware of any such incident at the time. That reference, however, later made sense to the First Minister in the light of what Mr Salmond subsequently told her on 2 April.

7.9. Regarding her failure to recall the 29 March meeting when addressing the Scottish Parliament on 8 January 2019 the First Minister says that it is obviously not possible for anyone to be certain of the reasons for forgetting an event. She think the reason this meeting was not engraved in her mind (beyond the fact that it was an unscheduled meeting in the middle of a busy day) are as set out in paragraphs 7.4, 7.5, 7.6 and 7.7 above. She has expanded upon these comments as follows. Firstly, by the time she met with Mr Aberdein, she already had what she described as a 'lingering concern' that allegations might emerge about Mr Salmond.

This was as a result of the Sky media query in November 2017. In other words, the meeting was not the first time possible allegations about Mr Salmond had been raised with her. Had it been, her memory might have been more vivid. But the second, and in her opinion perhaps more relevant factor is that her meeting with Mr Salmond himself a few days later on 2 April was so significant. It was then that he told her the details of the actual complaints against him and his response to them. She thinks it is because this was such a shock to her that the earlier meeting was overwritten in her mind.

7.10. It is regrettable that the First Minister's statement on 8 January 2019 did not include a reference to the meeting with Mr Aberdein on 29 March. In my opinion, however her explanation for why she did not recall this meeting when giving her account to Parliament, while inevitably likely to be greeted with suspicion, even scepticism by some, is not impossible. What tilts the balance towards accepting the First Minister's account for me is that it is difficult to think of any convincing reason why if she had in fact recalled the meeting she would have deliberately concealed it while disclosing all the conversations she had had with Mr Salmond. Furthermore, given that the meeting was with Mr Aberdein who was expected to report it back to Mr Salmond it would have been naive to think that the meeting would remain secret given the First Minister's poor relationship with Mr Salmond at that point.

7.11. Mr Salmond strongly disputes the First Minister's contention that she forgot the meeting. He argues that:-

> In her written submission to the Committee, the First Minister has subsequently admitted to that meeting on 29 March 2018, claiming to have previously 'forgotten' about it. That is, with respect, untenable. The pre-arranged meeting in the Scottish Parliament of 29 March 2018 was "forgotten" about because acknowledging it would have rendered ridiculous the claim made by the First Minister in Parliament that it had been believed that the meeting on 2 April was on SNP Party business (Official Report 8 & 10 January 2019) and thus held at her private residence. In reality all participants in that meeting were fully aware of what the meeting was about and why it had been arranged. The meeting took place with a shared understanding of the issues for discussion - the complaints made and the Scottish Government procedure which had been launched. The First Minister's claim that it was ever thought to be about anything other than the complaints made against me is wholly false.
>
> The failure to account for the meeting on 29 March 2018 when making a statement to Parliament, and thereafter failing to correct that false representation is a further breach of the Ministerial Code. Further, the repeated representation to the Parliament of the meeting on 2 April 2018

as being a ‘party’ meeting because it proceeded in ignorance of the complaints is false and manifestly untrue. The meeting on 2 April 2018 was arranged as a direct consequence of the prior meeting about the complaints held in the Scottish Parliament on 29 March 2018.

34. The First Minister additionally informed Parliament (Official Report 10 January 2018) that ‘I did not know how the Scottish Government was dealing with the complaint, I did not know how the Scottish Government intended to deal with the complaint and I did not make any effort to find out how the Scottish Government was dealing with the complaint or to intervene in how the Scottish Government was dealing with the complaint.’

I would contrast that position with the factual position at paragraphs 20 and 27 above. The First Minister’s position on this is simply untrue. She did initially offer to intervene, in the presence of all those at the First Ministers house on 2 April 2018. Moreover, she did engage in following the process of the complaint and indeed reported the status of that process to me personally.

7.11. It is for the Scottish Parliament to decide whether they were in fact misled. Mr Salmond overstates the case when he refers to “the repeated representation to the Parliament of the meeting on 2 April 2018 as being a ‘party’ meeting”. The Official Reports of the Scottish Parliament for 8, 10 and 17 January 2019 contain no such claim by the First Minister. She did deny that the meetings were Government meetings on the basis that she had no responsibility for operating the Government”s harassment complaints procedure and indeed no knowledge of the complaints except for what Mr Salmond told her. She claims that she confined her role in these meetings to explaining that she could not and would not become involved in the matter. Mr Salmond claims that she agreed to intervene. The fact is that she did not intervene. Mr Salmond has also claimed that her failure to intervene to prevent what he saw as an illegal procedure was also a breach of the Ministerial Code.

7.12. The failure to disclose the meeting of 29 March with Mr Aberdein to the Scottish Parliament on 8 January 2019, although the First Minister’s statement was technically a correct statement of the occasions on which the she had met Mr Salmond nonetheless resulted in an incomplete narrative of events. For the reasons stated above I accept that this omission was the result of a genuine failure of recollection and was not deliberate. That failure did not therefore in my opinion amount to a breach of the Ministerial Code.

8. The meeting of 2 April 2018

8.1. The following facts concerning the meeting of 2 April are not in dispute: the meeting took place in Ms Sturgeon's home in Glasgow. The meeting took place at Mr Salmond's request and with the First Minister's agreement. Present in the house were the First Minister, her Chief of Staff, Ms Lloyd, Mr Salmond, and Mr Aberdein. Mr Duncan Hamilton, a barrister retained on behalf of Mr Salmond was also present; his attendance had not been notified to the First Minister in advance. Mr Peter Murrell, the husband of the First Minister and Chairman of the SNP arrived home while the meeting was still taking place but took no part in it.

8.2. The meeting was in two parts, a discussion between the First Minister and Mr Salmond on their own followed by a meeting at which all five persons were present. The first part of the meeting was in private because Mr Salmond initially asked to see the First Minister privately. No permanent civil servant was present at any part of the meeting. [redacted] The meeting was a lengthy one; the First Minister estimates between one and two hours; Mr Aberdein describes the first part of the meeting at which only the First Minister and Mr Salmond were present as lengthy.

8.3. The First Minister has stated that at the meeting Mr Salmond told her that complaints against him were being investigated under the Procedure. At that meeting, he showed her a copy of the letter he had received informing him of the complaints. He shared the details of the complaints made against him under the Procedure with her and gave her his response to them.

8.4. Notwithstanding the suspicions she had harboured going into this meeting, the First Minister describes herself as shocked and upset by the reality of what she read. Mr Salmond gave her his reaction to the complaints In the main he denied them, though in relation to one matter he said that he had previously apologised and considered it out of order for it to be raised again, and said that it was his intention to seek a process of mediation between himself and the complainers. It was also clear,

contrary to what the First Minister had anticipated, that he did not intend to resign his party membership or do anything to make the matter public at that stage.

8.5. The First Minister states that as it was clear to her then that these were complaints under the Scottish Government's Procedure, she knew that she had no role in the matter and would not be made aware of it by the Permanent Secretary until any investigation concluded. She states that she was clear to Mr Salmond that she would not intervene.

8.6. The First Minister states that she suspected the reason Alex Salmond wanted to see her on April 2 was that he was facing an allegation of sexual misconduct. The principal reason for this was the "lingering suspicion" she had formed following the alleged incident reported by Sky News on 13 November 2017 and referred to in paragraph 9.1. above. She says that her discussion with Mr Aberdein on 29 March 2018 may have contributed to her suspicion.

8.7. In answer to the question why, if she suspected the nature of what Mr Salmond wanted to speak to her about on 2 April, she nevertheless agreed to the meeting, she states that the reasons were both personal and political. She thought Mr Salmond might be about to resign from the SNP and that, as a result of this or other aspects of how he intended to handle the matter he was dealing with, the party could have been facing a public/media issue that the SNP would require to respond to. As Party Leader, she considered it important that she knew if this was in fact the case in order that she could prepare the party to deal with what would have been a significant issue. As to the personal aspect Mr Salmond has been closer to her than probably any other person outside her family for the previous 30 years, and she was being told he was very upset and wanted to see her personally.

8.8. Although I accept the First Minister's statement that her motivation for agreeing to the meeting was personal and political, and she may have sought to underscore this by hosting it in her private home with no permanent civil servant present and no expenditure of public money, it could not in my opinion be characterised as a party meeting. Members of political parties do not ordinarily attend party meetings accompanied by their lawyers, and when the First Minister's husband, who is chairman of the SNP, arrived home, he did not join the meeting. In fairness the First Minister did not seek to make any case to me that this was a party meeting.

8.9. The First Minister says that she took no action as a result of the meeting. Indeed this appears to be confirmed by Mr Salmond one of whose complaints is precisely that the First Minister failed to take the action he requested. In effect his request was to alter or to override the Government policy and procedure in respect of handling harassment cases which had been agreed in late 2017. It is difficult not to conclude, therefore, that an aspect of the meeting concerned this Government procedure, although of course this was a Government procedure from which the First Minister was excluded by its express terms as a result of the policy adopted in 2017 and she claims that her involvement was only to explain why she could not and would not become involved..

8.10. However, in his submission Mr Salmond strongly argues that the First Minister did in fact agree to intervene in the process to secure a mediation process to resolve the complaints. He claims that she gave an assurance to that effect on 2 April. His account is supported by his advocate, Mr Duncan Hamilton, who states that he has a clear recollection that the First Minister said that "If it comes to it I will intervene". Mr Aberdein did not hear this statement made but he had absented himself from the room at one point and it could have been said in his absence.

8.11. The First Minister, in her written statement, says that she was clear to Mr Salmond that she would not intervene. When appearing before the enquiry in the Scottish Parliament in reply to a question from Mr Stuart McMillan as to why she said to Mr Salmond "I want to assist", which he took to mean that she would intervene to advocate for mediation in the first instance, she replied:-

> I want to paint a picture—or rather, give people the context. I was sitting in my house. We are talking about 2 April, which was Easter Monday. The man whom I had worked with, been friends with and in my earlier years had looked up to so much had just told me something pretty shocking. My head was spinning and I was dealing with complicated emotions. When you are sitting with a friend who is saying, "I'm facing this terrible situation," it is entirely possible that you say things like, "I'd love to help if I could"—people say that kind of thing. This was a human situation. We are talking about it now as a political scrutiny situation, which is absolutely proper, but in the moment, it was a human situation between two people who knew each other really well.
>
> As I think that I have described to Andy Wightman, from the minute I saw the letter, I knew that it would not be appropriate for me to intervene. I was probably trying to soften that for him. From his accounts, maybe I softened that too much. In real time, I was also thinking, "Is there anything I have to do? Do I have to report this to anybody?" All of that was going through my

> head as we were having that discussion. However, I did not intervene because, for the reasons that I set out very vehemently to Margaret Mitchell, I did not think that that would have been appropriate for me to do.

In reply to a question from Alex Cole-Hamilton the First Minister did not deny that she had made the statement attributed to her by Duncan Hamilton:-

> I made clear to him [i.e. Mr Salmond] that I had no role in the process. He could see that himself, because, I think, he had a copy of the process. I think that I made it clear that I would not intervene. Given what he has said and what Duncan Hamilton has said, there is a question about whether, in discussing with him what he thought should happen, I made that clear enough. If Duncan Hamilton says that I said something like that, there is, in a sense, disputed evidence. However, when I look at the things that I am being accused of saying, they do not strike me as being, "Yeah, yeah, I'm going to intervene." Rather, they are things like, "Well, I'll help if it is appropriate or if it comes to it"—if it comes to what? I do not know. The permanent secretary has got to tell me. Under the procedure, the permanent secretary would not tell me until the end. It sounds as if I was not actually thinking of intervening. However, if Alex left there with the impression that I was, all that I can say is that that, clearly, was not the impression that I wanted to give him.
>
> A crucial part in this is that I did not intervene. It has been put to me today that I should have intervened, but I did not. Whatever way I expressed myself and whatever discussions I took part in, I did not intervene in the process.

As the First Minister has repeatedly, and correctly, stated, she did not intervene. Indeed, her failure to intervene has been a constant source of complaint from Mr Salmond who has even suggested that her failure to do so may itself have been unlawful as contrary to the Scotland Act (see his text message of 3 June referred to in paragraph 10.2 below). If Mr Salmond was entirely confident that he had in fact secured an unequivocal commitment from the First Minister to intervene one might have expected him to follow it up and to press home his advantage. In fact, however, the next communication between the First Minister and Mr Salmond did not occur until three weeks later.

9. The telephone call of 23 April

9.1. The First Minister has stated that after the meeting of 2 April it was not her intention to meet with or speak to Mr Salmond about the matter again. Mr Salmond sent her a message on 22 April with a request to speak to her by telephone. When he did so she again thought it possible that he was intending to respond in a way that would make the matter public. She explains that in her opinion it would have been very much in character for him to have made a bold public declaration about the complaints made against him in order to, as he would see it, 'take control of the story'. This could have been along the lines of 'I'm standing down from the SNP while I fight to clear my name' or even a partial *mea culpa* 'I've made mistakes, but I'm not guilty of what I am accused of'. Back then, this is what she assumed he would eventually do. As Party Leader, she was keen not to be blindsided by such a development, and she explains that is why she agreed to the call.

9.2. The First Minister spoke to Mr Salmond by telephone on 23 April (the substantive call took place early in the evening after a call in the morning had to be aborted due to a poor signal). Her Chief of Staff was in the room with her during this call but not on the line. The First Minister thinks the call lasted around 10 to 15 minutes in total. During the call Mr Salmond asked her to advise the Permanent Secretary that she knew of the investigation and to persuade the Permanent Secretary to accede to Mr Salmond's request for mediation. She says she told him emphatically that she would not do so. Mr Salmond says that he phoned the First Minister by arrangement on WhatsApp to say that a formal offer of mediation was being made via his solicitor to the Permanent Secretary that day.

9.3. Mr Salmond seems during the course of his discussions with the First Minister to have referred to mediation and arbitration in two distinct contexts. Initially he referred to possible mediation between himself and the complainers. At a later stage he was referring primarily to a possible process of arbitration concerning the issues which finally gave rise to his legal proceedings against the Scottish Government. However, the absence of a provision in the Procedure for mediation between the complainers and a former Minister accused of harassment was always a subject of complaint from him. The First Minister states that she was in any event clear that she would not become involved in making representations so from her point of view that distinction does not seem to have assumed any particular importance.

10. The decision to inform the Permanent Secretary

10.1. Mr Salmond sent a further message to the First Minister on 31 May seeking a further meeting. The First Minister states that she initially resisted this request. She says that she still thought it possible that Mr Salmond might 'go public', but the content of their telephone conversation on 23 April and the tenor of his text messages to her on 31 May and 1 June made her think this was unlikely at that stage. Therefore, her intention was to decline this meeting request. The text messages between them show him wishing to provide her with "material" and that she, without outrightly declining to meet, was finding reasons why a meeting was not convenient, which reasons may well have been perfectly genuine. In a text message on I June the First Minister wrote "I'm not at home at weekend and in Aberdeen on Monday. In any event, I'd prefer a quick chat first to understand the purpose of giving me material. We've already spoken about why I think me intervening is not right thing to do. Happy to talk on what's app at some point over weekend." Mr Salmond describes this as the opposite of the assurance she gave on 2 April.

10.2. On 3 June Mr Salmond sent the following message:-

> My recollection of our Monday 2 April meeting was rather different. You wanted to assist but then decided against an intervention to help resolve the position amicably. Now is different. I was intending to give you sight of the petition for JR drafted by senior counsel. You are a lawyer and can judge for yourself the prospects of success which I am advised are excellent. This will follow ANY adverse finding against me by the PS in a process which is unlawful. You are perfectly entitled to intervene if it is brought to your attention that there is a risk of your Government acting unlawfully in a process of which you had no knowledge. Indeed it could be argued that is your obligation under the Scotland Act is to ensure that all government actions are consistent with Convention undertakings
>
> The JR will be rough for me since the hearing will almost certainly be made public but at least I will have the opportunity to clear my name and good prospects of doing so - but for the Government? One further thing to consider. Thus far we have been able to confine evidence offered to the general (and mostly ridiculous) matters. This has had the benefit of keeping everything well clear of current administration. When we go to Court we will have to produce evidence to demonstrate prior process (which incidentally the PS has admitted!).
> If you want to discuss privately then I can come to you in the North East on Monday.]

10.3. The First Minister states that the tone and content of this message changed her view of the matter. She explains that the tone of it seemed almost to her intimidatory and the content made clear he was considering legal action. As a result, she decided to inform the Permanent Secretary. The permanent Secretary confirms that she did so on 5 June following up with a letter on 6 June which is set out below.

10.4. The First Minister agreed to meet Mr Salmond and did so on 7 June. There is nothing in the tone of the messages arranging the meeting to indicate her change of opinion, but on the other hand, there was no reason why she would have disclosed this to Mr Salmond in advance of the meeting.

10.5. The First Minister states that her decision to inform the Permanent Secretary was not one she took lightly. Her earlier decision not to inform the Permanent Secretary of her knowledge, which she says had also not been taken lightly, had been intended to protect the integrity and confidentiality of the process.

10.6. The First Minister decided to make it known to Mr Salmond that she had informed the Permanent Secretary, and to make clear again that she would not intervene as he wanted her to. She indicated to the Permanent Secretary in her letter to her that she intended to have such a conversation with him. She states that she felt it important to do this, firstly, because in her opinion Mr Salmond can be persistent and will often interpret conversations or messages in a way that best suit his interests. She wanted to leave no room for misinterpretation. Also, she believed it highly likely that their paths would cross towards the end of that week at the SNP Conference. As it turned out, she thinks he did not attend. She considered that speaking to him in a planned way was better than having him try to 'corner' her in the course of the Conference.

10.7. The text of the First Minister's letter to the Permanent Secretary was as follows:-

> Letter from FM to Permanent Secretary
>
> STRICTLY PRIVATE & CONFIDENTIAL
>
> 6 June 2018
>
> **For the attention of the Permanent Secretary**
> On Monday 2 April I was informed by Alex Salmond that you were investigating a complaint from within the civil service about his conduct

while First Minister and that the complaint relates to alleged conduct of a sexual nature.

It was clear, from what he told me, that the complaint was being investigated under the guidance put in place towards the end of last year as part of the Scottish Government's response to the public discussion around sexual harassment cases, and which contained provisions for the handling of any complaints against former Ministers. I recalled and explained that as First Minister I had no role in this process, and that I would be advised of a complaint against a former Minister only when you have concluded your investigation.

The former First Minister (FFM) contacted me again on Monday 23 April to say that he intended to propose mediation.

I told the FFM on both occasions that it would not be appropriate for me to seek to intervene in the process in any way and I did not do so.

[Redacted]

After careful consideration, I decided not to inform you of these approaches as I did not want there to be any suggestion that I was seeking to intervene in the process.

However, I have now had a further approach from the FFM and, given its nature and that it represents a potential challenge to the process, I have decided that I should make you aware of it.

The FFM has told me that he considers the process being followed by the Scottish Government to be unlawful, that he has legal advice to the effect that he would be successful in an application for Judicial Review of the process, and that if any finding is made against him, it is his intention to lodge an application for Judicial Review to seek to have the process declared unlawful.

I want to be very clear that my purpose sending this note is not to ask you to cease the investigation or to influence its course in any way – it is to be transparent with you about my knowledge of a potential challenge to the process. You and I have discussed on many occasions the importance of a zero tolerance approach to sexual harassment within the Scottish Government and the importance to building confidence in such an approach of taking such complaints seriously and ensuring proper investigation. I am clear that the seniority, political affiliation or relationship to me or my government of any person subject to a complaint should have no bearing on how it's handled. To that end, you have my support in taking whatever steps you consider necessary and appropriate to investigate any complaint about inappropriate conduct within the Scottish Government.

It remains my view that it would be inappropriate for us to discuss the substance of the investigation prior to its conclusion.

I intend to inform the FFM that I have told you about his approach to me and to advise him again that it would not be appropriate for me to intervene in the process.

Finally, I am also mindful of the public interest considerations that arise when allegations of this nature are made. At this stage, however, it is my view that the interest of ensuring that the conduct of the investigation is fair to all parties and respects the confidentiality of the complainant(s) is the priority.

NICOLA STURGEON

10.8. I enquired of the Permanent Secretary, Ms Leslie Evans, concerning her actions and involvement in the matters covered by my remit. Her reply includes the following statements:-

You asked for a statement of my actions and involvement in the matters covered by your remit. In providing such a statement, I should make clear from the outset that, as a civil servant, all my actions – including those taken in relation to this matter – are undertaken on behalf of Ministers and in keeping with the Civil Service Code.

I was not aware at the time – nor have I been made aware since - of any attempt by the First Minister to bring any influence to bear on the Scottish Governments's investigation of complaints against Mr Salmond under the Procedure for Handling Harassment Complaints against Current or Former Ministers. At all times, my engagement with the First Minister was in keeping with the respective roles set out for the First Minister and Permanent Secretary in the Procedure. Accordingly, I did not inform the First Minister that formal complaints had been made about Mr Salmond when they were received in January 2018. In line with the Procedure, I did inform the First Minister of the outcome of the investigation at a meeting on 22 August 2018 in her capacity as both First Minister and as Leader of the Party which the former Minister in question, Mr Salmond, had represented.

As I have set out in my response to your specific questions below, the First Minister wrote to me on 6 June 2018, following a discussion on 5 June 2018, informing me of contact that she had had with Mr Salmond. I replied to the First Minister on 7 June 2018 to acknowledge receipt of her letter and to note the information it contained. In addition, I also wrote to the First Minister towards the end of the investigation on 17 August 2018 to inform her I was seeking legal advice on next steps. In addition to these exchanges, the only other communication I recall with the First Minister on this matter was a telephone call sometime in mid-July in which she told me that she had met with Mr Salmond on 14 July 2018 and that he had raised the issue of arbitration with her. She made it clear to me again that she had

no role in this matter and that I must reach whatever decision I thought appropriate. Accordingly, my communication with the First Minister on this issue was very limited during the period in which the investigation was in progress.

In line with the Procedure, Mr Salmond had a number of opportunities to contribute to the investigation. I address this further in my answers to your specific questions below.

The intentions that lay behind my actions at all times throughout this period were the need to follow the process set out in the Scottish Government's Procedure for Handling Harassment Complaints against Current or Former Ministers, in line with the Civil Service values of integrity, honesty, objectivity and impartiality. This was especially true in carrying out the responsibilities as Deciding Officer assigned to the Permanent Secretary under the Procedure. At no time did I experience any attempt whatsoever by the First Minister – or anyone acting on behalf of the First Minister – to influence how I undertook that role, or the decisions I came to, either in terms of the process followed or the substance of the matter. Indeed, this point is made explicit in the First Minister's letter to me of 6 June 2018: (Here the Permanent Secretary quoted from the First Minister's letter set out above).

11. The meeting on 7 June

11.1. This meeting took place in Aberdeen on 7 June 2018. The First Minister says that her Chief of Staff was aware of the meeting but not present though she did interrupt to bring it to an end as the First Minister had other matters to attend to. At the meeting on 7 June, the First Minister says she advised Mr Salmond of the action she had taken and made clear again that she was not prepared to intervene in the process. He wanted to give her a document to take away which she believes was a legal opinion he had obtained. She declined to do so. He stated his intention to take legal action if necessary. She expressed it as her opinion that given the seriousness of the complaints against him he should consider addressing the substance of them. Mr Salmond's description of the meeting does not differ in substance from the First Minister's.

11.2. The First Minister later told the Permanent Secretary of this meeting, but says that they did not have any detailed discussion about it.

12. The meeting on 14 July and telephone conversation of 18 July

12.1. Mr Salmond sent the First Minister a further message on 5 July 2018. She did not respond to this message.The message is interesting in explaining Mr Salmond's view of arbitration and how he sought to persuade the First Minister of what he saw as its advantages for the Scottish Government. I quote the relevant part of the message:-

> Nicola. I have slept on the content of the latest letter from the PS rejecting arbitration. Two points I want to make to you privately. Firstly, the explanation given in the letter is that arbitration is rejected because the SG is confident in the legality of the process. With respect, that entirely misses the point. The SG may well believe it is lawful. My Senior Counsel believes it is unlawful. That's the whole point of the arbitration.
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> The legality will have to be resolved either in private (in a confidential and binding arbitration) or in public at the Court of Session. The SG, and you, have everything to gain from arbitration. If my legal advice is wrong, I will accept that and the current process proceeds. If the SG legal advice is wrong, you discover that without losing in a public court. Adopting an arbitration process also guarantees confidentiality for the complainers, regardless of what happens.

12.2. The next contact between Mr Salmond and the First Minister was on 13 July 2018, as a result of a message sent to Mr Salmond on WhatsApp saying the First Minister wanted to meet him, which led to their third and final meeting being arranged for 14 July at her home. The First Minister states that by the time of the meeting on 14 July, she was again concerned that the matter might become public. She says that she always thought it possible, even likely, that this was the course Mr Salmond would ultimately take. Were he to take legal action, which she now knew he was considering, this could also put matters into the public domain. She was again anxious - as Party Leader and from the perspective of preparing the SNP for any potential public issue - to know whether his handling of the matter meant it was likely to become public in the near future.

12.3. At that meeting, he told the First Minister he was asking the Scottish Government to agree a process of arbitration. For reasons that she says

she did not understand then, and does not understand now, he believed she was blocking this. She told him that was not so as she had no involvement in the complaint process. She says that she suggested again that he should address the substance of the complaints rather than simply focusing on procedure. Although he indicated he would reflect on this, the First Minister believed that he was focused on his request for arbitration and seemed unwilling to accept that she would not put pressure on the Permanent Secretary to accede to it. However, she did tell the Permanent Secretary on 16 July that in relation to arbitration she (the Permanent Secretary) should "reach whatever decision [she] thought appropriate" (see paragraph 10.8 above and Paragraph 12.6 below). In this respect the First Minister indicated her neutrality on the issue, contrary to Mr Salmond's belief that she expressed her opposition to arbitration.

12.4. Mr Salmond sent the First Minister further messages on 15 and 16 July 2018. The First Minister states that the message of 15 July is Mr Salmond's interpretation of her saying that she was not involved in the decision. I quote:-

> Many thanks for making the time yesterday. I am grateful that you will correct the impression being given that you are against arbitration or that it is somehow against your interests. I know that you need to reflect further on how to progress things beyond that and am not blind to the difficulty of legal advice being suspicious of arbitration. I am genuinely at a loss as to what the downside is for anyone, complainers, SG or me or you. The reasons given to date have been meaningless or more recently just a misrepresentation of your position. If there are good legal reasons then surely they can be set out for you/us. I will wait to hear how you are able to proceed. I am also giving much thought to your advice and thinking deeply about how arbitration on process might open up the space and opportunity to address and resolve the underlying matters, as far as is possible, to everyone's satisfaction.

12.5. By this time, it was clear to the First Minister that her relationship with Mr Salmond was breaking down. In her opinion he was clearly upset and angry that she was not assisting him to achieve the outcome he wanted. The First Minister states that she was also upset with him. She says that the nature of the complaints against him and the account he had given her of one of them had badly shaken her faith in him. She states, however, that in spite of that she did not want their relationship to break down completely. He had been her friend and colleague for 30 years.

12.6. The First Minister advised the Permanent Secretary on 16 July of her meeting with Mr Salmond on 14 July and made the Permanent Secretary aware of his belief that she was blocking arbitration. The First Minister made clear to the Permanent Secretary again that she had no view on the matter and the decision was for the Permanent Secretary alone. Given the risk of legal action, she says she did not want any suggestion that an opinion attributed to her, which she had not expressed, was influencing decisions she had no part in. She reiterated to the Permanent Secretary that she must reach whatever decisions she considered appropriate and that she, the First Minister, did not seek to influence her in any way. The First Minister also told her - she thinks it was on the First Minister's return from annual leave - that she had spoken to Mr Salmond on the phone on 18 July, but she says that did not discuss the details of that conversation.

12.7. The First Minister says that it was her wish to avoid her relationship with Mr Salmond from breaking down completely that prompted her telephone call to him on 18 July. She wanted to draw a line under their contact about the matter. She was also about to take a two day summer break and she did not want it interrupted by contact from him. However, she thinks she was also hoping to make him understand and accept why she could not and would not intervene.

12.8. Mr Salmond's account of this 18 July telephone call is that the First Minister phoned him at 13.05 to say that arbitration had been rejected and suggested that this was on the advice of the Law Officers. She urged him to submit a substantive rebuttal of the specific complaints against him, suggested that the general complaints already answered were of little consequence and would be dismissed, and then assured him that his submission would be judged fairly. She told him he would receive a letter from the Permanent Secretary offering him further time to submit such a rebuttal which duly arrived later that day. Mr Salmond says that as it turned out the rebuttal once submitted was given only cursory examination by the Investigating Officer in the course of a single day and that she had already submitted her final report to the Permanent Secretary. Mr Salmond's view is now that it was believed that his submission of a rebuttal would weaken the case for Judicial Review (his involvement in rebutting the substance of the complaints being seen to cure the procedural unfairness) and that the First Ministers phone call of 18 July 2018 and the Permanent Secretary's letter of the same date suggesting that it was in his "interests" to submit a substantive response was designed to achieve that.

12.9. Later on 18 July, Mr Salmond sent the First Minister a copy of a letter he had received from the Scottish Government. She did not respond to this message. He sent her a further message on 20 July 2018. Again, she did not respond. She has had no contact with Mr Salmond since.

13. The Procedure for handling complaints against Ministers and former Ministers and Mr Salmond's objections to it

13.1. As already mentioned in Chapter 2 above, in December 2017 the Scottish Government adopted the Procedure. Its full and formal title is "Handling of harassment complaints involving current or former ministers" and it is described as an "internal procedure agreed in December 2017 and published in February 2018 on the Scottish Government intranet". Since 23 August 2018 it is also published on the Scottish Government's website at https://www.gov.scot/publications/handling-of-harassment-complaints-involving-current-or-former-ministers/. The manner in which the Procedure is intended to operate are set out in Chapter 3 above.

13.2. As pointed out in Chapter 3 the Procedure not only does not envisage the notification of complaints made against former Ministers to the First Minister prior to the completion of the investigation but is designed to preclude her from having any role in the process. The purpose of this provision is clearly to avoid either the reality or the appearance of political interference with the process of an investigation and to ensure the impartiality of investigations. In my opinion this is a legitimate objective of the scheme,

13.3. So far as concerns the limitations on the First Minister's involvement in the Procedure in my opinion the principle of excluding any role for politicians in the resolution of complaints of harassment of public servants is not only a legitimate one but there is a strong case for maintaining it. It is appreciated that Mr Salmond and no doubt others do not share this view. Mr Salmond made a forceful case to the effect that the Minister may

intervene in the Procedure in his submission to me which I discuss below at paragraph 13.7.

13.4. In the event the Government accepted that the process of investigation in the case of the complaints made against Mr Salmond was flawed because of contact between the person who was appointed as investigating officer and the complainants both before and at the time their complaints were formally made. It is not part of my remit to examine how or why that happened or whether matters might have been handled differently except insofar as it is alleged that certain aspects of the conduct of the Government's defence to Mr Salmond's legal proceedings in themselves constituted a breach of the Ministerial Code. This aspect of the matter is dealt with in Chapter 14 below. I have, however, been asked in the remit "to consider and offer views on whether the Ministerial Code might need revision to reflect the terms of the Procedure and the strict limitations it places on the involvement of the First Minister in cases which fall to be considered under the Procedure." I am not asked in my remit to comment on whether the Procedure itself may require revision in the light of experience and it is not part of the function of the independent advisers on the Ministerial Code.

13.5. It is of course important to learn what lessons there are from the experience gained in dealing with the complaint against Mr Salmond. In his judicial review proceedings he raised a substantial number of complaints about the procedures applied in his case apart from the issue conceded by the Government. In his submission to me he has repeated his view that there are serious deficiencies in the Procedure and has identified a number of them, including the absence of a mediation procedure in the case of complaints against former Ministers as well as the more fundamental question of how a non-statutory and non-contractual scheme could bind a former Minister who had already left office when the Procedure was introduced. It seems to me that a report on the question whether there have been breaches of the Ministerial Code is not the place to provide that answer. Since Mr Salmond's judicial review proceedings were conceded by the Scottish Government on one of the grounds argued there is no court decision on the merits of the various other legal grounds advanced in Mr Salmond's proceedings. It may be necessary, therefore, to examine each and every one of these issues with a view to deciding what, if any, amendments to the Procedure may be required in the light of this experience. In particular in my opinion the question of whether a relatively informal resolution procedure is appropriate at all and offers proper guarantees for the rights of all parties where the facts alleged in a complaint may also, if proved, amount to

serious criminal conduct, is a matter which should receive further consideration.

13.6. I understand a process of review is underway by Ms Laura Dunlop QC. This is a more appropriate forum in which to deal with these questions. Ultimately the question of whether there are legal deficiencies in the Procedure which need to be addressed is one for the Scottish Law Officers.

13.7. Mr Salmond in his submission to me, having expressed his concern about the terms of the remit of this enquiry, among other matters stated the following:

> 4. …The reason for my concern is that the remit drawn up for Mr Hamilton focuses on whether the First Minister intervened in a civil service process. As I have pointed out to Mr Hamilton, I know of no provisions in the Ministerial Code which makes it improper for a First Minister to so intervene.
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> 5. To the contrary, intervention by the First Minister in an apparently unlawful process (subsequently confirmed by the Court of Session) would not constitute a breach precisely because the First Minister is under a duty in clause 2.30 of the Ministerial Code to avoid such illegality on the part of the Government she leads.
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> 6. Further, to suggest intervention was a breach would be to ignore and contradict the express reliance of the procedure on the position of the First Minister as the leader of the party to which the former minister was a member in order to administer some unspecified sanction.

13.8. It is certainly correct that there is nothing in the Ministerial Code which expressly prevents the First Minister from involving herself in any process of government. However, the procedures to be followed in an internal Scottish Government enquiry into allegations of harassment were set out in the Procedure which had been adopted and agreed by the Scottish Government including the First Minister as recently as fourteen months previously. While that Procedure had not been enacted into law, and it might therefore be argued that the Scottish Government could have revoked or overridden it, it could hardly be argued that the First Minister would have had any power unilaterally to do so. The Ministerial Code lays a major emphasis on the principle of collective cabinet responsibility which is as binding on the First Minister as on her ministerial colleagues.

13.9. Even had such a unilateral move by the First Minister been possible it would undoubtedly have been seen as a partisan and political interference in a process which was then underway, and as an

interference of a nature which the Procedure was expressly designed to prevent. What is more the complainants had undoubtedly acted in the expectation that their complaints would be dealt with in accordance with the terms of the Procedure. What answer could have been made if these complainants in their turn had sought a judicial review of an attempt to overturn a process which was already underway? Such a U-turn would certainly have been both legally and politically impossible even had the First Minister wished to make it, which clearly she did not. One can only imagine the political reaction had the First Minister attempted to override a system expressly designed to deal with harassment complaints against former Ministers on the first occasion when it was used for this purpose. To have adopted a harassment Procedure after extensive consultation, and then to have altered it following a confidential arbitration process, as Mr Salmond was proposing, at a time when significant complaints against a former First Minister were actually under investigation, would undoubtedly have undermined public confidence in the processes of government to a much greater extent than in fact eventually happened as a result of Mr Salmond's successful judicial review.

13.10. Furthermore, to suggest that the First Minister not only could but should have intervened unilaterally to protect legality is to ignore the role of the Law Officers both under the Scotland Act and in the terms of the Ministerial Code. Paragraph 2.30 of the Code, having stated the overarching duty on Ministers to comply with the law goes on to state that it is part of the role of the Law Officers to ensure that the Government acts lawfully at all times.

13.11. It might be argued that a distinction could be drawn between an involvement in the Procedure to override the Permanent Secretary's decision as distinct from a possible involvement to insist on settling the litigation intended and subsequently in fact brought by Mr Salmond by agreeing to his demands for arbitration. In my opinion such a distinction would be wholly artificial. The First Minister acted in accordance with the spirit as well as the letter of the Procedure in declining to involve herself in questions concerning Mr Salmond's intended or actual litigation. The Procedure was one which the legal advisers to Scottish Government had been involved in drawing up. The services of the Scottish Law Officers, who under the Scotland Act 1998 are responsible for the provision of legal advice to Scottish Government, were at all times available to the First Minister and Scottish Government when the Procedure was being devised and to the Permanent Secretary when Mr Salmond's judicial review was

being defended. Even on the assumption that the Law Officers got it wrong it does not follow that the First Minister was in breach of the Ministerial Code in failing to take Mr Salmond's advice.

13.12. I do not, therefore, accept that the First Minister's decision to follow the terms of the Procedure and not to seek to avoid or amend it during the course of an ongoing investigation amounted to a breach of the Ministerial Code. In my opinion for the reasons stated in the preceding paragraphs Mr Salmond's submissions in this regard are misconceived.

14. The Handling of Mr Salmond's Judicial Review Proceedings and the Ministerial Code

14.1. Mr Salmond has raised a further matter which he says constitutes a breach of the Ministerial Code. He refers to the manner in which the Scottish Government attempted to defend his petition for judicial review in which he challenged the legality of the Procedure and its application in his case.

14.2. As is now well known the Scottish Government's defence of the petition was a saga of failures to disclose relevant evidence. The key documents relevant to the Government's defence have been, rather belatedly, published by the Scottish Government on its website and can be accessed at https://www.gov.scot/publications/legal-advice-related-to-the-parliamentary-inquiry-into-the-scottish-governments-handling-of-harassment-complaints-sghhc/.

14.3. I do not propose to set out here a full chronology of what happened. The key problem was that the Investigating Officer in charge of investigating the complaints against Mr Salmond had had prior contact with the complainers before the complaints were formally made. However, the Procedure Stated that the IO "will have had no prior involvement with any aspect of the matter being raised." Unfortunately the full extent of the prior involvement was not revealed all at once and the details of that involvement emerged in instalments. The impact of this can be gauged from counsel's response at different stages- "a very real problem indeed" and "extremely concerning" on 31 October, the Petition "more likely than not to succeed" on 6 December. On that date counsel advised

29 The question that will justifiably now be asked is where this takes us. There are only two options.

30 One is to concede the Petition and, if so advised, return to square one. We have no doubt whatsoever that this is not an attractive option: it would require the conceding of (doubtless substantial) expenses, and would be trumpeted everywhere by the petitioner.

31 The other is simply to press on regardless. That is, in many ways, even less attractive: the expenses will be far higher, and the trumpeting far louder, if the case proceeds to a written judgment. Moreover, and potentially of more concern, is the real prospect of damaging criticism from Lord Pentland. He is not a judge known to pull his punches, and we are both concerned at the possibility of criticism, both from the bench in the course of the hearing and in any written judgment, which would not reflect well on the respondents.

32 Ultimately, our own view is that the "least worst" option would be to concede the Petition. We understand how unpalatable that advice will be, and we do not tender it lightly. But we cannot let the respondents sail forth into January's hearing without the now very real risks of doing so being crystal clear to all concerned.

14.4. In an email of 11 December from an unknown Government source it is stated that the Lord Advocate "was indeed clear about no question of conceding, with a stress on the benefit that would accrue from a judicial finding (a) that it was right to have a procedure in such circumstances and (b) it was right to have this procedure, even if there is a risk - which we all know and understand - that he may be forced to hold that there were faults in the way it was applied in the particular case". In another email of the same date from an unknown Government source it is stated that the Lord Advocate and the Solicitor General were "very clear that no question or need to drop the case. LA clear that even if prospects are not certain it is important that our case is heard. Senior Counsel made clear that his note was not intended to convey that he didn't think we had a stateable case…"

14.5. On 17 December Counsel's pessimism had deepened. The following extracts from a joint advice of Senior and Junior Counsel of that date they state:-

1 We have drafted this note for the eyes of the Lord Advocate and Paul Cackette only.

2 It has been prepared in response to a series of events in the week of 10 December 2018 which led us to consider very seriously whether we were

bound to withdraw from acting for the respondents in this matter. Having given the question anxious consideration we concluded that we would be entitled to so withdraw but at this stage are not bound to do so.

3 We introduce matters in this way to convey the seriousness of matters from our perspective.

31. It has become increasingly clear that the approach of the petitioner in this matter is one which may appropriately be described as a “scorched earth” one. It is clear that there is no concern on his part as to who might be criticised, or harmed, as a result of these proceedings. We understand that this is well understood by those “in the crosshairs” – most obviously the Permanent Secretary and the First Minister. If instructions are to proceed notwithstanding then so be it – we are not in a position where we are professionally unable to mount a defence (because, for example, there is no statable defence). We are, however, perilously close to such a situation. We are firmly of the view that at least one of the challenges mounted by the petitioner will be successful. We are told that there are other aspects to the case which justify the running of the defence and that, accordingly, there is no prospect of the petition being conceded. That decision is not for us to take and as long as informed consent is given the decision to proceed is one which we must obey. We are, however, entirely unconvinced as to what benefit that might arise from the hearing in January that might outweigh the potentially disastrous repercussions thereof. Leaving aside the large expenses bill that would inevitably arise, the personal and political fallout of an adverse decision – especially if, as may be the case, it is attended by judicial criticism – seems to us to be something which eclipses by some way the possibility of helpful judicial comments. That being so, and recognising as we do that the wider political picture is something that others are far better than are we to comment upon, we cannot let pass uncritically the suggestion that the petition cannot be conceded. It would be possible simply to accept (as is our genuine advice as a matter of law) that the appointment of JM as Investigating Officer was, whilst made in bona fide, on reflection indefensible. That would render nugatory all of the other, potentially more harmful, aspects to the challenge. Accepting that a technical error was made could not sensibly be criticised. This would protect those that might otherwise be harmed by the vigorous nature of the challenge that is to be mounted. It would stem the substantial expenses bill that we have no doubt is presently being incurred. Given that we genuinely cannot see the defence prevailing in any event, that seems to us to be the only sensible approach.

32 We are acutely aware that much of this has already been said, and discounted. The decision to proceed has been taken by very experienced legal and political minds, who are entitled to proceed as they wish. However, we are – independently but also mutually – unable to see that the benefits in proceeding come close to meeting the potential detriments in so doing. Given the potential for harm we simply wish all concerned – and we include the First Minister in this – to be absolutely certain that they wish us

to plough on regardless notwithstanding the concerns which we have outlined

14.6. On 19 December matters had deteriorated further. The following is from a joint note from counsel:

1 We write further to recent events. With regret, our dismay at this case deepens yet further.

2 We will not rehearse the regrettable way in which document disclosure has unfolded. Suffice to say that we have each experienced extreme professional embarrassment as a result of assurances which we have given, both to our opponents and to the court, which assurances have been given on instructions, turning out to be false as a result of the revelation of further documents, highly relevant yet undisclosed. We, of course, required to consult at 9.15pm last night to discuss the ramifications thereof.

3 This morning, the first part of the commission began. The inevitable result of the last minute disclosure of the additional documents was that the commission required to be adjourned. The havers now cited for Friday can expect a torrid time in the witness box given the late disclosures. That comment applies in particular to the IO, for the reasons which follow.

4 All of that is bad enough. However, it pales beside the revelation in the course of this morning of two further documents. These give rise to the same two concerns discussed in the consultation last night: (i) the late nature of their revelation; and (ii) their content. Each document comes from the IO.

5 As to the late nature of the revelation, this is unexplained, and frankly inexplicable. Given the nature of the searches described by as having been undertaken, we regret that we simply cannot understand why these documents have been made available only now

14.7. There followed what was described as a “watershed moment” on 21 December. The Investigating Officer in the case gave evidence on oath in the commission that in relation to a meeting between her and a complainer immediately before the complaint was made she could not remember that meeting As counsel pointed out, this meant that the Government could not aver, much less prove, what happened at the

meeting, and thus unable to rebut the rather obvious inferences that might be drawn from the fact that the meeting happened. Following this the Scottish Government decided to throw in the towel.

14.8. There is undoubtedly scope for political criticism of the manner in which Scottish Government handled Mr Salmond's proceedings. That is not a matter for me to express any view upon. However, Mr Salmond argues that the manner in which the case was handled amounts to a breach of "the overarching duty on Ministers to comply with the law" stated in paragraph 2.30 of the Ministerial Code.

14.9. There are undoubtedly ways in which the handling of court proceedings could involve illegality. Perjury is a serious offence, and the tendering of evidence known or believed to be perjured would be a grave matter, as would the use of forged documents in legal proceedings. Malicious prosecution is both a tort and a crime. Conspiracy to pervert the course of justice is also a serious offence. It is also essential that judges can trust counsel and solicitors who appear before them and therefore very high standards are expected in respect of their duty of candour and not to mislead the court. Instructions to act in breach of these duties would therefore be a serious matter.

14.10. I cannot see that any of these issues arose in this case. On several occasions counsel made clear their disagreement with decisions that were made but in each case accepted that the final say rested with the Law Officers. There is no doubt from the whole manner and tone of counsel's advices that they would, quite properly, have declined to accept any instructions which were improper.

14.11. Mr Salmond appears to be under the misapprehension that the Government is under a duty to withdraw a case if advised that there is less than an evens chance of winning. There is no such rule and the prediction of the outcome of cases is not an exact science.

14.12. There is in my opinion no evidence whatsoever that the First Minister acted improperly or in breach of the Ministerial Code with respect to Mr Salmond's petition. The evidence suggests that the key legal decisions were taken by the Law Officers. Having regard to the duty of the Law Officers to ensure that the Government acts lawfully at all times, and having regard to the position of the Lord Advocate under the Scotland Act (he cannot be removed from his position by the First Minister without the consent of the Sottish Parliament) I think the First Minister was fully entitled to rely on his legal advice.

15. The Ministerial Code: Contacts with External Individuals and Organisations, including Outside Interest Groups and Lobbyists

15.1. Sections 4.22 and 4.23 of the Ministerial Code provide as follows:-

> 4.22 Ministers meet many people and organisations and consider a wide range of views as part of the formulation of Government policy. Meetings on official business should normally be arranged through Private Offices. A private secretary or official should be present for all discussions relating to Government business. Private Offices should arrange for the basic facts of formal meetings between Ministers and outside interest groups to be recorded, setting out the reasons for the meeting, the names of those attending and the interests represented. A monthly list of engagements carried out by all Ministers is published three months in arrears.
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> 4.23 If Ministers meet external organisations or individuals and find themselves discussing official business without an official present – for example at a party conference, social occasion or on holiday – any significant content (such as substantive issues relating to Government decisions or contracts) should be passed back to their Private Offices as soon as possible after the event, who should arrange for the basic facts of such meetings to be recorded in accordance with paragraph 4.22 above.

15.2. It seems to have been generally assumed, even in the terms of the remit itself, that section 4.22 of the Ministerial Code applied to the meetings between the First Minister and Mr Salmond. I begin by saying that I do not accept that these meetings can be considered as SNP party meetings for the reasons stated in paragraph 9.8 of this report in which I discuss the character of the meeting of 2 April. The First Minister has accepted that before that first meeting with Mr Salmond she suspected

the reason Alex Salmond wanted to see her on April 2 was that he was facing an allegation of sexual misconduct. As already explained I accept her statement that her motives for agreeing to the meeting were partly political and partly personal.

15.3. From the first sentence of paragraph 4.22 of the Code it is clear that the primary, and possibly the sole purpose of this provision is to deal with meetings with people and organisations which are held or can be considered "as part of the formulation of Government policy." This is reinforced by the subsequent requirement in the paragraph "for the basic facts of formal meetings between Ministers and outside interest groups to be recorded, setting out the reasons for the meeting, the names of those attending and the interests represented." Paragraph 4.23 then extends the provision to deal with the situation where informal meetings or discussions take place but again this is qualified by confining it to discussions containing "any significant content (such as substantive issues relating to Government decisions or contracts)". Ministers must have numerous contacts every day which are not required to be recorded under this provision. The other highly significant aspect of this provision is that it applies only to "contacts with *external* individuals and organisations, including *outside* interest groups and lobbyists." (Emphasis added).

15.4. We know what the discussions were about. They concerned a governmental process for dealing with harassment complaints against Scottish Government Ministers, former Ministers and officials generally known as "the Procedure". As already stated Its full and formal title is "Handling of harassment complaints involving current or former ministers" and it is described as an "internal procedure agreed in December 2017 and published in February 2018 on the Scottish Government intranet". Since 23 August 2018 it is also published on the Scottish Government's website at https://www.gov.scot/publications/handling-of-harassment-complaints-involving-current-or-former-ministers/.

15.5. Note that the procedure is clearly described as an internal procedure. It did not apply to anybody who did not and never had worked for Scottish Government. Indeed it was precisely the claim made by Scottish Government to have jurisdiction over harassment carried out by former Ministers during their time in office which formed a major bone of contention between Mr Salmond and the Scottish Government. In my opinion any person who was being proceeded against under the Procedure, or for that matter was making a complaint under its provisions, was entitled to raise an issue without the matter being recorded under these provisions of the Code. I fully accept the logic of the First Minister's

position that it would have been impossible to record such meetings or discussions without a risk of prejudicing the proceedings or interfering with their confidentiality.

15.6. In my opinion, therefore, neither the letter nor the spirit of paragraphs 4.22 and 4.23 of the Ministerial Code applied to the discussions between the First Minister and Mr Salmond. Consequently I do not consider that the First Minister acted in breach of the Code in not disclosing them prior to 5 June.

16. The alleged leak to the Daily Record

16.1. Mr Salmond has asked for an investigation into whether an alleged criminal leak of part of the contents of the Permanent Secretary's Decision report to the Daily Record was sourced from the First Minister's Office.

16.2. It is no part of my function and I have no power to investigate criminal offences. If Mr Salmond has evidence it is a matter for the police.

17. Conclusions

17.1. I have considered the following issues which were alleged to amount to a breach of the Ministerial Code by the First Minister:-

1. The allegation that her failure to record her meetings with and telephone discussions with Mr Salmond and others on 29 March, 2 and 23 April, 7 June and 14 and 18 July 2018 amounted to a breach of paragraphs 4.22 and 4.23 of the Ministerial Code.

2. The allegation that the First Minister may have attempted to influence the conduct of the investigation then being undertaken by the Permanent Secretary into allegations made against Mr Salmond under the Procedure for Handling of Harassment Complaints involving Current or Former Ministers ("the Procedure").

3. The allegation that the First Minister misled the Scottish Parliament in relation to her meetings as specified in paragraph 1 above.

4. The allegation that the First Minister was in breach of her duty to comply with the law in respect of the Scottish Government's response to the petition of Mr Salmond (cite correct title of petition).

17.2. For the reasons set out in detail above in this Report I am of the opinion that The First Minister did not breach the provisions of the Ministerial Code in respect of any of these matters.

James Hamilton

12 March 2021

Draft 10 March further revised by JH

Report of the Independent Adviser on the Scottish Ministerial Code into the self-referral by the First Minister Ms Nicola Sturgeon into allegations that she breached the Code in respect of meetings and discussions with the former First Minister Mr Alex Salmond between 29 March 2018 and 18 July 2018 and related matters

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The Remit for the Investigation

The remit for the investigation

The remit for the self-referral to me by the First Minister under the Scottish Ministerial Code was set out as follows by the Deputy First Minister, Mr John Swinney, in a reply to a parliamentary question in the Scottish Parliament on 3 August 2020.

> "It has been alleged that the First Minister breached the Scottish Ministerial Code in that she failed to feed back the basic facts of meetings and discussions held with Alex Salmond to her private office as required by sections 4.22 and 4.23 of the Code. The meetings and discussions in question took place on:
>
> 29 March 2018 – Meeting between Ms Sturgeon and Geoff Aberdein, former Chief of Staff to Mr Salmond, Scottish Parliament
> 2 April 2018 - Meeting between Ms Sturgeon and Mr Salmond at Ms Sturgeon's home.
> 23 April 2018 - Telephone conversation between Ms Sturgeon and Mr Salmond.
> 7 June 2018 - Meeting between Ms Sturgeon and Mr Salmond at SNP Conference, Aberdeen.
> 14 July 2018 - Meeting between Ms Sturgeon and Mr Salmond at Ms Sturgeon's home.
> 18 July 2018 - Telephone conversation between Ms Sturgeon and Mr Salmond.
>
> It is has been further suggested that, in light of those meetings, the First Minister may have attempted to influence the conduct of the investigation then being undertaken by the Permanent Secretary into allegations made against Mr Salmond under the Procedure for Handling of Harassment Complaints involving Current or Former Ministers ("the Procedure").

Scottish Ministerial Code

The key relevant extracts from the Code are:

1.6. Ministers are personally responsible for deciding how to act and conduct themselves in the light of the Ministerial Code and for justifying their actions to Parliament and the public. The First Minister is, however, the ultimate judge of the standards of behaviour expected of a Minister and of the appropriate consequences of a breach of those standards. Although the First Minister will not expect to comment on every matter which could conceivably be brought to his or her attention, Ministers can only remain in office for so long as they retain the First Minister's confidence.

1.7. Where he or she deems it appropriate, the First Minister may refer matters to the independent advisers on the Ministerial Code to provide him or her with advice on which to base his or her judgement about any action required in respect of Ministerial conduct. The findings of the independent advisers will be published.

Contacts with External Individuals and Organisations, including Outside Interest Groups and Lobbyists

4.22 Ministers meet many people and organisations and consider a wide range of views as part of the formulation of Government policy. Meetings on official business should normally be arranged through Private Offices. A private secretary or official should be present for all discussions relating to Government business. Private Offices should arrange for the basic facts of formal meetings between Ministers and outside interest groups to be recorded, setting out the reasons for the meeting, the names of those attending and the interests represented. A monthly list of engagements carried out by all Ministers is published three months in arrears.

4.23 If Ministers meet external organisations or individuals and find themselves discussing official business without an official present – for example at a party conference, social occasion or on holiday – any significant content (such as substantive issues relating to Government decisions or contracts) should be passed back to their Private Offices as soon as possible after the event, who should arrange for the basic facts of such meetings to be recorded in accordance with paragraph 4.22 above.

The First Minister has, accordingly, referred the matter for consideration by one or both Independent Advisers for advice on which to base her judgement about any action required in accordance with the Code.

Remit

The remit for the referral is to:

Review any relevant documentation relating to the meetings and discussions listed above.
Interview any Minister or official of the Scottish Government, including Special Advisers, who may have any knowledge of the facts and content of the meetings and discussions, to assess whether the Ministerial Code is engaged and, if so, whether the terms of the Code have been complied with.
Interview any relevant person outwith the Scottish Government, including the former First Minister, Alex Salmond, who may have information relating to the facts and content of the meetings and discussions.
Determine if there is any evidence that the First Minister attempted to use information discussed during those meetings and discussions to influence the conduct of the investigation being undertaken by the Permanent Secretary into allegations made against Mr Salmond under the Procedure.
Provide the Deputy First Minister with a report setting out the findings and conclusions with regard to:

i. whether the Ministerial Code is engaged regarding the meetings and discussions;

ii. whether there has been any breach of the Code and the nature of any such breach; and

iii. if a breach has occurred, advice on the appropriate remedy or sanction.

The Independent Adviser is further invited to consider and offer views on whether the Ministerial Code might need revision to reflect the terms of the Procedure and the strict limitations it places on the involvement of the First Minister in cases which fall to be considered under the Procedure.

Timing

The Independent Adviser is invited to commence the investigation and submit a report as soon as possible."

In accordance with the remit I sought and received written observations from persons who included the following: the First Minister, Ms Nicola Sturgeon; the former First Minister, Mr Alex Salmond; the permanent Secretary to the Scottish Government, Ms Leslie Evans: Ms Liz Lloyd, Chief of Staff to the First Minister, Mr Geoffrey Aberdein, a former Special Adviser and Chief of Staff to the former First Minister, Mr Duncan Hamilton, Mr Kevin Pringle, Mr David Clegg, Mr Stuart Nicholson and Mr Peter Murrell. All of these witnesses gave me full co-operation and answered follow-up questions where necessary. I carried out follow-up interviews with a number of the witnesses where I considered clarifications were required. One person who had attended the first

meeting between the First Minister and the Deputy First Minister declined to make a statement, but since he had attended that meeting in the capacity of a legal adviser to Mr Salmond this is unsurprising. I had, in any event, no power to compel any person to cooperate with the investigation

Report and Findings

1. Brief summary of the factual background

1.1. The principal factual background to the questions raised in the remit is as follows:

Mr Alex Salmond resigned as First Minister of Scotland on 18 November 2014 and was succeeded as First Minister the following day by Nicola Sturgeon.

1.2. In December 2017 the Scottish Government adopted a new procedure entitled "Handling of harassment complaints involving current or former ministers" (subsequently referred to in this report as the Procedure) which is described as an "internal procedure agreed in December 2017 and published in February 2018 on the Scottish Government intranet". Since 23 August 2018 it is also published on the Scottish Government's website at https://www.gov.scot/publications/handling-of-harassment-complaints-involving-current-or-former-ministers/.

1.3. By a letter dated 7 March 2018 Mr Alex Salmond was informed that an internal investigation had been commenced under the Procedure on 17 January 2018 in respect of two formal complaints made by civil servants about his behaviour during his time as First Minister.

1.4. [redacted] Mr Geoffrey Aberdein, former Chief of Staff to Mr Salmond, met [redacted] Mr Aberdein says that [redacted] informed him that complaints had been made against Mr Salmond and named one of the complainants. [redacted] disputes this. Having discussed the matter with other contacts Mr Aberdein decided to inform Mr Salmond of the allegations and did so by telephone later that week. By that time Mr Salmond had already received the letter of 7 March informing him that complaints had been made.

1.5. On 29 March 2018 there was a meeting between the First Minister and Mr Aberdein, which took place in the First Minister's office in the Scottish Parliament.

1.6. There then followed a series of meetings and telephone conversations between the First Minister and Mr Salmond.

1.7. The first of these meetings took place in the evening of 2 April 2018 at the First Minister's home. Mr Aberdein and Ms liz Lloyd, Chief of Staff to the First Minister, were present as well as Mr Duncan Hamilton who was acting as a legal adviser to Mr Salmond.

1.8. On 23 April 2018 there was a telephone conversation between the First Minister and Mr Salmond.

1.9. On 23 April 2018 there was a second telephone conversation between the First Minister and Mr Salmond.

1.10. On 7 June 2018 there was a second meeting between the First Minister and Mr Salmond during the Scottish National Party Conference which took place in Aberdeen.

1.11. On 14 July 2018 there was a third meeting between the First Minister and Mr Salmond which took place at the First Minister's home.

1.12. On 18 July 2018 there was a third and final telephone conversation between the First Minister and Mr Salmond.

2. The adoption of the Procedure for handling complaints against Ministers and former Ministers

2.1. In December 2017 the Scottish Government adopted a procedure entitled "Handling of harassment complaints involving current or former ministers." It is described as an "internal procedure agreed in December 2017 and published in February 2018 on the Scottish Government intranet" and will be referred to as "the Procedure" in this report. Since 23 August 2018 the Procedure is also published on the Scottish Government's website at https://www.gov.scot/publications/handling-of-harassment-complaints-involving-current-or-former-ministers/.

2.2. The Procedure was adopted following a process of consultation involving the First Minister, the Scottish Cabinet, the Permanent Secretary and other senior officials of Scottish Government, the Chief of Staff, the Scottish Parliament, the Scottish Government's People Directorate, as well as the Scottish Government's Directorate for Legal Services. The draft was also shared with the Cabinet Office of the United Kingdom Government and the Scottish Government Trade Unions. The process of developing this policy and the consultations involved are described in

some detail in a document entitled *Response to Committee of the Scottish Government Handling of Harassment Complaints* (the Response Document) dated June 2020 prepared in response to a request from the Scottish Parliament's Committee on Scottish Government Handling of Harassment Complaints.[8]

2.3. The Response Document includes the following explanations of the motive behind the policy review:-

> Tackling bullying and harassment, and ensuring that the Scottish Government is a more diverse and inclusive organisation, sits at the heart of the Scottish Government's organisational strategy, as it did at the time covered by this statement…
>
> The 2016 People Survey[9] continued to show that a significant minority of staff (10%) said they had experienced bullying or harassment, but combined with the very low number of formal complaints raised[10], this suggested a possible lack of awareness of or confidence in existing processes and procedures. This led to the appointment in spring 2017 of a Director to champion work to tackle bullying and harassment within the organisation. The focus at that time was understanding and addressing the cultures that can allow bullying and harassment to occur and to raise awareness about the drivers for positive and inclusive cultures across the organisation.[11]
>
> A wider societal focus on sexual harassment and sexual abuse had been increasing at the same time, and in early October 2017 reactions to sexual abuse allegations against Harvey Weinstein brought widespread exposure to the #Me Too movement, which was seeking to tackle sexual harassment and abuse by making the scale of the problem clear. A number of allegations of sexual harassment and assault were also reported in Westminster and the Scottish Parliament during October and November 2017. These issues were a matter of considerable concern across Government and the Parliament, as well as among individual MSPs, and the public at large.[12]

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[8] Response to Committee of the Scottish Government Handling of Harassment Complaints (Response Document) see
: SP+SGHHC1+Phase+1+Written+Statement+19+June+2020.pdf (www.gov.scot)

[9] https://www2.gov.scot/Topics/Research/by-topic/public-services-and-gvt/Employee-Survey/PeopleSurvey-2016

[10] https://www.gov.scot/publications/foi-17-02235/

[11] Response to Committee of the Scottish Government Handling of Harassment Complaints, paragraph 4.

[12] Ibid., paragraph 5

2.4. The review process identified a gap in the then existing procedure of dealing with sexual harassment claims, that is, that there was no mechanism for dealing with historic claims against former Ministers. This gap is described in the Response Document as follows:-

> 19. The review process in 2017 identified that while options were available to consider potential sexual harassment complaints about serving Ministers, no such option was available in respect of former Ministers. Those involved in the review process identified that there was a gap in the coverage in terms of having a procedure that could be deployed should any historical complaints arise in Scotland. It was recognised that a number of the allegations that had emerged at Westminster related to the actions of former Ministers during their time in office.
>
> 20. On 4 November 2017, during this review process, a Scottish Government Minister resigned his Ministerial post, following allegations made from outside the Scottish Government about his personal conduct. This example reinforced for the Scottish Government the importance of making sure that it had policies and procedures in place which were capable of responding appropriately to such allegations should they arise within the Scottish Government.
>
> 21. Following the identification of that gap in the overall framework, work was put in hand to determine the most effective way to fill it…As a result, Scottish Government officials began work on the development of a new procedure that could be applied in respect of former Ministers. The first version of the procedure was created on 7 November, which was the beginning of an iterative and collaborative drafting process. In the course of the drafting of that procedure it was decided to broaden its scope to also include serving Ministers[13] so that there would be a single procedure that could be applied in respect of harassment complaints involving Ministers, whether current or former. This was also consistent with existing plans to review Fairness at Work. Later, following a view from the First Minister and Permanent Secretary, the procedure was amended to cover all forms of harassment, not just sexual harassment.[14]

2.5. It appears that its drafters did not consider that there might be any legal obstacle to applying the Procedure, designed and described as an internal Scottish Government procedure, to former Ministers who were no longer in a contractual or statutory relationship with Scottish Government

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[13] https://secure.objectiveconnect.co.uk/share/9456-dd30-0a6c-46a6-bf88-64e2-fb7a9ff9/document/8a6f-68e1-b8b4-41c7-a936-2a01-8aa7-57ea

[14] https://secure.objectiveconnect.co.uk/share/9456-dd30-0a6c-46a6-bf88-64e2-fb7a9ff9/document/e6e3-41bf-1320-4cf0-94de-6702-045d-7286

and in respect of whom the previously existing harassment complaints procedure had already expired at the time of their retirement. I have not seen any legal advice which may have been provided to Scottish Government at the time but we do know that according to the Response Document the Scottish Government's lawyers were consulted as part of the approval process of the Procedure.

2.6. However, when complaints were laid against the former First Minister, Mr Alex Salmond, he disputed the right of Scottish Government to apply the Procedure to him and ultimately sought a judicial review against it. Among the objections which he raised to the Procedure was the claim that he could not, as a former office-holder, legitimately have been made amenable to a disciplinary procedure which had been introduced as an administrative act without any statutory or other legal basis. He challenged the retrospective effect of the Procedure. Mr Salmond also alleged procedural unfairness in the operation of the Procedure. These issues are further addressed in Chapter in whch I discuss Mr Salmond's claim that the manner in which Scottish Government defended the case which he brought amounted to a breach of the Ministerial Code on the part of the First Minister.

2.7. It not necessary for the purposes of my remit for me to express a view on the merits of any of Mr Salmond's claims. These were matters of Scottish law which ultimately only the Scottish courts could have decided and to an extent did decide.

2.8. I understand that so far as concerns the future of the complaints procedure in respect of former Ministers and any amendments that may be required or thought desirable in the light of the failed disciplinary proceedings against Mr Salmond a separate enquiry led by Ms Laura Dunlop QC is preparing a report.

2.9. Any questions concerning any political responsibility for the events which occurred in relation to the adoption of the Procedure are matters for the Scottish Parliament and I do not express any opinion on these.

2.10. My brief is to enquire into whether the First Minister was in breach of the Ministerial Code. It has been made clear that in this I am not confined to the specific question of whether paragraphs 4.22 and 4.23 of the Code were breached but am expected to enquire whether any breach of the Code has been committed by the First Minister regarding her meetings and discussions with Mr Salmond between 29 March 2018 and 18 July 2018.

2.11. I can find nothing in the conduct of the First Minister in respect of the introduction of or her observance of the Procedure which could be considered to be a breach of the Code. The Response Document has set out the reasons for the introduction of the Procedure. In my opinion those reasons demonstrated a proper concern for the objective of strengthening the procedures for dealing with cases of harassment and bullying, especially sexual harassment, and it was perfectly proper and appropriate for the First Minister to lead this process and to give it every support possible. The process was supported by advice from the most senior Scottish Government officials, including the legal department, as well as experts in the area of human resources and the handling of complaints. In my opinion the First Minister was entitled to rely on the advice she received. If there was any error in that advice- and I offer no opinion on that question- she cannot be regarded as personally in breach of the Ministerial Code because she relied on advice which was not correct. I accept the First Minister's evidence that at the time the Procedure was adopted she was not aware of any complaints or impending complaints against Mr Salmond.

2.12. A key principle in the Procedure is to avoid any risk of political interference in complaints and in particular to exclude the First Minister from any involvement in a complaint against a former Minister. In my opinion this is a legitimate and a proportionate objective of the Procedure.

2.13. As a result of this provision the First Minister excluded herself from being informed of or involved in dealing with any complaints against former Ministers which of course included the two complaints against Mr Salmond. In my opinion she was justified and acted properly in so excluding herself. Apart altogether from the provisions of the Procedure her long political association and personal friendship with Mr Salmond would have placed her in an invidious position and left herself open to accusations of bias and partiality had she allowed herself to become involved.

2.14. As already referred to above Mr Salmond has made a number of very serious allegations about the manner in which the complaints were investigated and dealt with including accusations of serious impropriety. I make no findings about the truth of any of these allegations which are still the subject of enquiries by the Committee on the Scottish Government Handling of Harassment Complaints of the Scottish Parliament. I accept the evidence of the First Minister that she had no involvement in these matters. I do not consider that the First Minister has any responsibility

under the Ministerial Code for any shortcomings or wrongdoing in the behaviour of other persons, if there were any such shortcomings or wrongdoing, in relation to matters from which she has properly excluded herself from any involvement.

3. The operation of the Procedure

3.1. The Procedure envisages a number of options for Scottish Government employees claiming to be victims of harassment by serving or former Ministers. “An individual may choose to raise an issue involving a current or former Minister through a number of mechanisms. These may include a senior manager of your choosing, direct to HR or a Trade Union representative.” (Paragraph 1). Options available to the staff member include asking that their concern is acknowledged but without further action being taken, or indicating that they wish to make a formal complaint (Paragraph 2). It is emphasised that at all times the staff member or the Scottish Government itself is free to make a complaint directly to the police Paragraphs 2.1, 18 and 19.

3.2. In the event that a formal complaint of harassment is received against a former Minister, the Director of People will designate a senior civil servant as the Investigating Officer to deal with the complaint. That person will have had no prior involvement with any aspect of the matter being raised. The role of the Investigating Officer will be to undertake an impartial collection of facts, from,(sic) the member of staff and any witnesses, and to prepare a report for the Permanent Secretary. The report will also be shared with the staff member. (Paragraph 10).

3.3. If the Permanent Secretary considers that the report gives cause for concern over the former Minister’s behaviour towards current or former civil servants the former Minister should be provided with details of the complaint and given an opportunity to respond. The former Minister will be invited to provide a statement setting out their recollection of events to add to the record. They may also request that statements are taken from other witnesses. If additional statements are collected the senior officer will revise their report to include this information and submit this to the

Permanent Secretary and share with the staff member. The Permanent Secretary will consider the revised report and decide whether the complaint is well-founded. The outcome of the investigation will be recorded within the SG. The Permanent Secretary will also determine whether any further action is required; including action to ensure lessons are learnt for the future.(Paragraph 11).

3.4. For complaints involving a former Minister who is a member of the Party of the current Administration, the Permanent Secretary will inform the First Minister both in this capacity and in the capacity of Party Leader, of the outcome when the investigation is complete. The First Minister will wish to take steps to review practice to ensure the highest standards of behaviour within the current Administration (Paragraph 12).

3.5. The Procedure not only does not envisage the notification of complaints made against former Ministers to the First Minister prior to the completion of the investigation but is designed to preclude her from having any role in the process. The purpose of this provision is clearly to avoid either the reality or the appearance of political interference with the process of an investigation and how a complaint is dealt with, and to ensure the impartiality of the process. In my opinion this is a legitimate objective of the scheme.

3.6. Chapter 13 below deals in more detail with aspects of how the procedure was adopted and its operation in relation to Mr Salmond.

4. Mr Aberdein's meetings with [redacted]

4.1. [redacted] adviser and Mr Geoffrey Aberdein. He had been Chief of Staff (the most senior special adviser) from 2011 to December 2014 during Mr Salmond's time as First Minister and had left government service when Mr Salmond resigned as First Minister following the SNP's defeat in the independence referendum. [redacted]

[redacted]

[redacted]

4.4. [redacted] In the light of the "me too" movement, the increased focus on issues of harassment and in particular historic harassment, and the creation of a new procedure in government to address such issues, [redacted] wanted to ask Mr Aberdein if there was anything of that nature, from his time as Chief of Staff, [redacted]

4.5. [redacted] had remarked the previous week that the content of an official briefing provided for First Minister's Questions on the issue of sexual harassment had changed. Where the briefing had previously given a clear answer of "No" to the question of whether there had been any complaints about current or former ministers, and had stated that fewer than 5 cases of sexual harassment had been reported in the civil service, the colleague had noticed that both of those statements had been removed, and a line about concerns having been raised and being considered in line with procedures was now the line that should be

used. That line could have referred to either staff or ministers and did not state that an investigation was underway into a former minister or into Alex Salmond.

4.6. [redacted] admits to having been aware at that time of growing rumours about Mr Salmond but claims at that stage not to have been aware of actual complaints made against him. [redacted]

4.7. Whilst discussing "me too" in general, [redacted] described asking Mr Aberdein whether he was aware of anything of concern. [redacted] said Mr Aberdein had no knowledge in relation to any other minister or former minister, but referred in general terms to two alleged incidents involving Mr Salmond. One was not sexual in nature.

4.8. In relation to the incident that was sexual in nature [redacted] said that Mr Aberdein gave a general description of the incident which he presented as being in his view a minor incident, [redacted] says Mr Aberdein named the person concerned and that he did not seem to think it was a particularly significant incident. [redacted]

4.9. The conversation about "me too" also referred to a 13 November 2017 allegation on Sky News that female staff at Edinburgh airport had expressed concern to airport managers about what they regarded as "inappropriate behaviour" which was not specified in the Sky News report. Mr Salmond was reported as "strongly denying" any wrongdoing and nothing more was ever heard of this matter. The alleged Edinburgh Airport incident is further discussed in Chapter 5 below. [redacted] also referred to "jungle drums" in the media about Mr Salmond ever since the "me too" movement became prominent in October 2017. [redacted] had apparently been approached on a number of occasions by reporters to ask if there had ever been complaints about ministers in general and Mr Salmond in particular.

4.10. According to [redacted] account Mr Aberdein suggested that Mr Salmond would not cope well with such allegations, but said he wasn't aware of anything further, and that he and Mr Salmond weren't really in touch that much anymore and there was no other discussion on the issue.

4.11. Mr Aberdein in his account makes no mention of discussing any of these matters [redacted]. He states that any reference to Alex Salmond in that first discussion was in the context of media coverage, particularly concerning Alex Salmond's decision to host a show on Russian television around that time which was the subject of much controversy. It is agreed by both participants that this subject was indeed discussed at this meeting.

4.12. Mr Aberdein, however, believes that the main purpose of [redacted]

[redacted]

[redacted] resulted from increasing concerns that whether or not there was currently any investigation into Mr Salmond, it was possible there could be in the future as it was clear there could be something to investigate. [redacted]

4.15. [redacted], in order [redacted] indicated having a reason to believe there might be a complaint and it could be about Mr Salmond. [redacted] says that Mr Aberdein took this to mean that someone within government had given [redacted] information about a complaint and began to name individuals who might have done so. He suggested that he would phone some contacts who had previously worked with him who would tell him if

there was a complaint. [redacted] then denied knowing if there was a complaint and advised against making such calls as it seemed highly improper. If this is indeed what happened it would be hardly surprising that Mr Aberdein misunderstood what [redacted] was saying.

4.16. Mr Aberdein has a very different recollection of this meeting. He states that it is his clear recollection that [redacted] informed him that the Scottish Government had received official complaints about Mr Salmond. He says that [redacted] denied knowing the full details of the complaints but did tell him there were two individual complainers and named one of them. [redacted]

4.17. If it were a simple matter of comparing the two accounts it would not be possible to be completely certain whose account is correct, although Mr Aberdein's account is more straightforward than the rather complicated account given by [redacted] It is difficult to see how there can have been a misunderstanding as to what was actually said despite [redacted] elaborate explanation of how Mr Aberdein could have misunderstood what was said.

4.18. However, whether it is the case that [redacted] There is no evidence to suggest that The First Minister was aware of Mr Aberdein's version of events. If Mr Aberdein's account is correct I think it quite likely in any event that [redacted]

[redacted] well aware that under

the Procedure harassment complaints were required to be treated in confidence and the First Minister was required not to be involved in any way in dealing with such complaints. It seems to me unlikely that the First Minister would have welcomed being potentially compromised by having rumour or gossip about such a complaint imparted to her [redacted]

4.20. Mr Aberdein states that it was [redacted]. Furthermore, what Mr Aberdein later told Mr Salmond turned out in fact to be correct.

4.21. The same day Mr Aberdein telephoned a former civil servant with whom he was friendly to tell her what had happened. She has made a statement confirming this. Later that day Mr Aberdein contacted Mr Kevin Pringle and Mr Duncan Hamilton by telephone to inform them of what he had been told about the complaints and to seek their advice about what he should do. They advised him to tell Mr Salmond. Mr Pringle has confirmed this account of what happened. Mr Hamilton initially declined to make a statement to me in view of his professional relationship with Mr Salmond but subsequently made a statement confirming Mr Aberdein's statement when released from his obligation of confidentiality by Mr Salmond. On 9 March and again on 11 March Mr Aberdein informed Mr Salmond by telephone of what [redacted] had told him. In view of this corroboration that Mr Aberdein informed these four individuals of the conversation promptly I believe that Mr Aberdein's account of what was said by [redacted] about the existence of complaints and the identity of a complainer is credible.

4.21. In the absence of any evidence that [redacted] informed the First Minister about either the existence or the contents of the complaints, then the discussions between Mr Aberdein and [redacted] do not in my opinion constitute any breach of the Ministerial Code by the First Minister. [redacted]. It remains the fact that the name which Mr Aberdein says was given to him by [redacted] was in fact the name of one of the complainers against Mr Salmond. [redacted]

5. **When did the First Minister become aware that there were allegations against Mr Salmond?**

5.1. The First Minister had been aware of the report on Sky News on 13 November 2017 referred to in paragraph 4.9 above. The report led to her having a "lingering concern" about Mr Salmond. She described it in an interview with me in the following terms:

> Round about the beginning of November 2017, just to put you in the picture, as you will recall this was at the time the whole world really was talking about the "me too" allegations, and, you know, organisations, governments, parliaments everywhere were trying to make sure they had the right processes in place. And this was around about the time we got a query from Sky News. By "we" I mean the SNP, not the Scottish Government, and that was about allegations that had been made by people at Edinburgh airport about conduct on the part of Alex Salmond.
>
> At that point I spoke to Mr Salmond about it. You know as far as I was aware at that point we were about to see a story appear on Sky News. I spoke to him the morning after we got the press query. He seemed pretty shaken by it at that point and said he had to get to the bottom of what it was. I spoke to him again later that day when he appeared much more bullish. But the following day the Permanent Secretary had indicated to me that he had been, or his lawyers, or a bit of both, I'm not sure, had been contacting people in the Scottish Government effectively asking people that he had worked with or that might have been with him going through Edinburgh Airport to back him up and that that has caused a bit of, some disquiet on the part of those people who had been contacted. And she asked me to ask him to stop that, which I did, and he said he already had all the information he needed. So I suppose the two things that just left me with a lingering concern was the fact that- and I struggle really to go beyond what I'm about to say to you- that his contacting people in the Scottish Government had appeared to almost stir something, a hornet's nest had been stirred kind of thing. That was the impression I got. And then he said something to me about, you know, you can't have stories like this running because you get one and the flood gates will open kind of thing, which he immediately qualified and said "oh no, that's not to say that I think there is anything there". But it was just the combination of things left me with a "is there something that is about to come forward about Mr Salmond's behaviour?" It wasn't something I thought about every day, or worried me everyday, but it was there in the back of my mind, and that I suppose is the back drop to what unfolded at a later stage.

5.2. Nothing more seems to have been reported about the Edinburgh Airport incident subsequently. As already discussed the First Minister says she first became aware of the fact that complaints against Mr

Salmond under the Procedure had been made at the meeting on 2 April discussed below. I am not aware of any evidence which would disprove her account.

6. The meeting on 29 March 2018

6.1. Sometime following a call to Mr Salmond early in March Mr Salmond intimated to Mr Aberdein that he would like to have a meeting with the First Minister in person to set out his concerns about the Scottish Government's handling of the complaints. Mr Aberdein cannot be precisely certain when and how this was arranged but [redacted]

6.2. Thereafter, he believes he may [redacted]

6.3. Mr Salmond's account of how the first meeting came about is that he was contacted by phone on or around 9 March 2018 and again the following week by Geoff Aberdein, his former Chief of Staff. The purpose of the contact was to tell Mr Salmond [redacted]

6.4. Mr Aberdein said that [redacted] informed him of two complaints concerning Mr Salmond under a new complaints process introduced to include former Ministers and named one of the complainers to him. At that stage [redacted]

6.5. On receipt of the letter from the Permanent Secretary first informing Mr Salmond of complaints on 7 March 2018 he had secured Levy and McRae as his solicitors and Duncan Hamilton, Advocate and Ronnie Clancy QC as his counsel.

6.6. Mr Salmond and his legal advisers then identified what they considered to be a range of serious deficiencies in the Procedure. There was no public or parliamentary record of it ever having been adopted. In addition they believed that it contained many elements of procedural unfairness and substantive illegality. In their opinion there was an obvious and immediate question over the extent to which the Scottish Government even had jurisdiction to consider the complaints. In relation to former Ministers (in contrast to current Ministers) the Procedure offered no opportunity for mediation. The previous complaints procedure with which Mr Salmond had been familiar ('Fairness at Work') was based on the legislative foundation of the Ministerial Code in which the First Minister was the final decision maker. He wished to bring all of these matters to the attention of the First Minister. He did not know at that stage the degree of knowledge and involvement in the policy on the part of [redacted] the First Minister [redacted]

[redacted]

6.8. On 29 March 2018 there was a meeting between the First Minister and Geoff Aberdein, former Chief of Staff to Mr Salmond, which took place in the First Minister's office in the Scottish Parliament. [redacted]

6.9 The First Minister described in an interview the circumstances in which the meeting was held. [redacted]. Mr Aberdein had recently made contact to ask if the First Minister would agree to see Mr Salmond because there was an issue he wanted to talk to her about and he was in a state of great distress. [redacted] Mr Aberdein might be in the Parliament on 29 March. The First Minister appears to have been told that a civil servant colleague,

somebody that Mr Aberdein had worked closely with was having a birthday celebration in the office and Mr Aberdein might be attending and if so he might try to grab a word with her. In fact Mr Aberdein did attend the Parliament that day.

JH: and then was he brought into your office? Was this just a discussion in the corridor so to speak?

FM: No no, we had been outside, just I don't expect you to visualise my office in Parliament but there is you know outside my office is where civil servants, special advisors work, so the member of staff whose birthday it was, civil servant, incidentally, we were outside there doing the birthday cake, singing happy birthday and Geoff had asked for a word and we went in to my office. Again, just to be clear, that would not have been the first time since Geoff had left as Chief of Staff, after I became First Minister that he had been in the office for something and had stepped in to my room for a chat. We were friends, you know, we are friends. And so he stepped into my room. From memory, I don't think was a particularly long conversation but it took place in my office.

JH: And did he give you any details at that stage about what it was about?

FM: Not, and this is where, so a combination of what I remember about this meeting and then what actually happened at my house on 2 April which we will come on to, make me very firm to the best of my recollection. Remember, this 29 March meeting had never been a significant event in my mind. To the best of my recollection no he did not give me details, it was very much he wanted to get me to agree to see to see Alec. Alec and I were very close but we hadn't been speaking as much as normal, you know I was First Minister, he was off doing other things, he had lost his seat. He wanted me to see Alec and agree to a meeting. He was telling me that he was very worried about Alec, a lot of the discussion was about Alec's state of mind. You know he seemed to be indicating that he had never heard Alec be quite so upset about anything previously, that he was very distressed, that he thought he might be about to resign his SNP membership because of the nature of the issue he was upset about. I do believe that I, partly down to what he was telling me, partly down to the Sky lingering concerns, that it was in the realms of a potential concern or complaint about sexual misconduct. But, you know in my mind, and this was not unusual; Alec and I have worked incredibly closely for a long time, if I was being told he wanted to tell me something, in my mind I would have had to see him and hear what he wanted to tell me. That's basically, I had a general sense that it was something serious, something in the realms of a sexual complaint potentially, and he was very upset about it but I agreed, we didn't set the date of the meeting with Alec at that point, [redacted] But I was very clear, I was agreeing to see Alec as a friend, I was being told he was in a state of considerable distress, but also as the leader of the SNP, I was being led to believe he was on verge of resigning his membership of the party.

6.10. Mr Aberdein agrees that the initiative for this meeting came from his making an approach on behalf of Mr Salmond. However, he is quite clear that he came to the Parliament on 29 March for the purpose of meeting the First Minister. He says he had not come in for the purpose of attending the birthday party of which he had been unaware in advance of his arrival in the Parliament. However, he did join the celebrations. The First Minister also briefly joined the party and they stepped into her office to discuss Mr Aberdein's concerns. The First Minister says that during the conversation he raised an incident allegedly involving Mr Salmond. It appears that this may have been the incident discussed by [redacted] and Mr Aberdein in [redacted], concerning which it is disputed who said what to whom. The First Minister says that he spent most of the meeting seeking to persuade her to meet Mr Salmond. She does not believe the discussion took longer than ten minutes, though Mr Aberdein was in parliament for a longer period, socialising with former colleagues. Mr Aberdein says that he gave a brief account of the complaints against Mr Salmond to the First Minister. Contrary to what Mr Salmond told the Parliamentary Committee he did not give details of the conduct alleged to have been engaged in by Mr Salmond as he did not in fact know the details. He agrees the meeting was a short one lasting ten or fifteen minutes. The meeting on 2 April resulted from that short conversation.

6.11. I find it very hard to know what to make of this story about the birthday party. Mr Aberdein's account to me was very convincing. Equally the First Minister seemed both convinced by and convincing in her account. It may be that [redacted] t may simply have been [redacted]

7. The First Minister's failure to refer to the meeting of 29 March in her statement to the Scottish Parliament on 8 January 2019

7.1. On 8 January 2019 the First Minister made a statement to the Scottish Parliament concerning the Procedure for Handling Complaints Involving Current or Former Ministers following the conclusion of Mr Salmond's

judicial review proceedings which the Scottish Government had withdrawn their opposition to.

7.2. In the course of that statement she disclosed for the first time the series of meetings and telephone calls in which she had held discussions with Mr Salmond as follows:-

> In the past, questions have also been raised about meetings that I had with Alex Salmond during the investigation, so I want to address that issue now. I met him on three occasions: on 2 April 2018 at my home in Glasgow; on 7 June 2018 in Aberdeen, ahead of the Scottish National Party conference; and on 14 July 2018, at my home. I also spoke to him on the telephone on 23 April and 18 July 2018. I have not spoken to Alex Salmond since 18 July. On 2 April, he informed me about the complaints against him, which—of course—in line with the procedure, the permanent secretary had not done. He set out his various concerns about the process. In the other contacts, he reiterated his concerns about the process and told me about proposals that he was making to the Scottish Government for mediation and arbitration. However, I was always clear that I had no role in the process. I did not seek to intervene in it at any stage—nor, indeed, did I feel under any pressure to do so.

7.3. The first and most obvious point to note is that this is technically an accurate list by the First Minister of the discussions she actually held with Mr Salmond. What has been suggested, however, is that the omission to refer to the meeting with Mr Aberdein on 29 March during her statement to the Scottish Parliament created an incomplete and therefore misleading account.

7.4. It is agreed by all concerned in the meeting of 29 March that Mr Aberdein's purpose was to persuade the First Minister that she should meet Mr Salmond and to agree the necessary arrangements if she decided to do so. Clearly Mr Aberdein was simply a go-between and any information which he could convey was at second hand and would be superseded by whatever Mr Salmond could say at first hand if a meeting took place. The 29 March meeting, according to all participants, took no more than 10 or 15 minutes.

7.5. The First Minister recalls that shortly before the meeting of 29 March [redacted] and she understood that [redacted] the possibility of allegations emerging against Mr Salmond (see paragraph 6.9 above). This was around the same time that a former Scottish Government minister had resigned from the SNP over allegations against him, so such matters were topical. The First Minister understood that [redacted]

[redacted] - Mr Aberdein [redacted] to see if the First Minister would meet Mr Salmond, as there was a specific matter that he wanted to discuss with her. Mr Aberdein was said to have indicated to [redacted] that Mr Salmond was in a state of distress and considering standing down from the SNP. The First Minister says that she had not been aware of these contacts in advance. [redacted]

7.6. According to the First Minister's recollection at the 29 March meeting Mr Aberdein was primarily seeking to persuade her to meet Mr Salmond. Her account of the meeting is set out at paragraph 6.9 above. She recalls that the discussion covered the fact that Alex Salmond wanted to see her urgently about a serious matter, and she thinks it did cover the suggestion that that matter might relate to allegations of a sexual nature. The impression she had at this time was that Mr Salmond was in a state of considerable distress, and that he might be considering resigning his party membership. However, while she suspected the nature of what he wanted to tell her, it was Alex Salmond himself who told her on 2 April that he was being investigated under the Procedure and also gave the detail of the complaints against him. Mr Aberdein agrees that the meeting was a very brief one, lasting no longer than fifteen minutes. Mr Aberdein says that he relayed to the First Minister a broad summary of the complaints as described to him by Mr Salmond. In describing what Mr Salmond had previously told him he refers to him in the course of a telephone call having "relayed to me, in very high level, a summary of the complaints." By "in high level" Mr Aberdein meant "not in detail"- indeed he made it clear to me that he was not aware of the detail. It is clear that the information given by Mr Salmond to the First Minister on 2 April was much more detailed than that relayed by Mr Aberdein on 29 March.

7.7. The First Minister says due to the nature of the information shared with her at the meeting of 2 April it was that meeting rather than the 29 March meeting with Mr Aberdein that has always been significant in her mind. She thinks that the assumption in her mind at the time of the 29 March discussion was that any issues of alleged sexual conduct against Mr Salmond would be related to the alleged incident at Edinburgh Airport which had been raised by Sky News in the query made to the SNP in early November 2017 and which concerned allegations of misconduct on the part of Alex Salmond and are discussed at paragraph s 4.9 and 5.1 above. She spoke to Mr Salmond about the allegations at the time. He denied them and, as it happened, Sky did not subsequently run a story about it. Since the identity of the individuals making the allegations was

not made known to the SNP and they did not approach the SNP directly, there was no further action that it would have been possible for the SNP to take. However, even though Mr Salmond assured her to the contrary, all of the circumstances surrounding this episode left the First Minister with a lingering concern that allegations about Mr Salmond could materialise at some stage.

7.8. [redacted] recalled a reference by Mr Aberdein to an incident Mr Salmond had apologised for some time previously. However, this would have meant nothing to the First Minister as she had not been aware of any such incident at the time. That reference, however, later made sense to the First Minister in the light of what Mr Salmond subsequently told her on 2 April.

7.9. Regarding her failure to recall the 29 March meeting when addressing the Scottish Parliament on 8 January 2019 the First Minister says that it is obviously not possible for anyone to be certain of the reasons for forgetting an event. She think the reason this meeting was not engraved in her mind (beyond the fact that it was an unscheduled meeting in the middle of a busy day) are as set out in paragraphs 7.4, 7.5, 7.6 and 7.7 above. She has expanded upon these comments as follows. Firstly, by the time she met with Mr Aberdein, she already had what she described as a 'lingering concern' that allegations might emerge about Mr Salmond. This was as a result of the Sky media query in November 2017. In other words, the meeting was not the first time possible allegations about Mr Salmond had been raised with her. Had it been, her memory might have been more vivid. But the second, and in her opinion perhaps more relevant factor is that her meeting with Mr Salmond himself a few days later on 2 April was so significant. It was then that he told her the details of the actual complaints against him and his response to them. She thinks it is because this was such a shock to her that the earlier meeting was overwritten in her mind.

7.10. It is regrettable that the First Minister's statement on 8 January 2019 did not include a reference to the meeting with Mr Aberdein on 29 March. In my opinion, however her explanation for why she did not recall this meeting when giving her account to Parliament, while inevitably likely to be greeted with suspicion, even scepticism by some, is not impossible. What tilts the balance towards accepting the First Minister's account for me is that it is difficult to think of any convincing reason why if she had in fact recalled the meeting she would have deliberately concealed it while disclosing all the conversations she had had with Mr Salmond. Furthermore, given that the meeting was with Mr Aberdein who was

expected to report it back to Mr Salmond it would have been naive to think that the meeting would remain secret given the First Minister's poor relationship with Mr Salmond at that point.

7.11. Mr Salmond strongly disputes the First Minister's contention that she forgot the meeting. He argues that:-

> In her written submission to the Committee, the First Minister has subsequently admitted to that meeting on 29 March 2018, claiming to have previously 'forgotten' about it. That is, with respect, untenable. The pre-arranged meeting in the Scottish Parliament of 29 March 2018 was "forgotten" about because acknowledging it would have rendered ridiculous the claim made by the First Minister in Parliament that it had been believed that the meeting on 2 April was on SNP Party business (Official Report 8 & 10 January 2019) and thus held at her private residence. In reality all participants in that meeting were fully aware of what the meeting was about and why it had been arranged. The meeting took place with a shared understanding of the issues for discussion - the complaints made and the Scottish Government procedure which had been launched. The First Minister's claim that it was ever thought to be about anything other than the complaints made against me is wholly false.
>
> The failure to account for the meeting on 29 March 2018 when making a statement to Parliament, and thereafter failing to correct that false representation is a further breach of the Ministerial Code. Further, the repeated representation to the Parliament of the meeting on 2 April 2018 as being a 'party' meeting because it proceeded in ignorance of the complaints is false and manifestly untrue. The meeting on 2 April 2018 was arranged as a direct consequence of the prior meeting about the complaints held in the Scottish Parliament on 29 March 2018.
>
> 34. The First Minister additionally informed Parliament (Official Report 10 January 2018) that 'I did not know how the Scottish Government was dealing with the complaint, I did not know how the Scottish Government intended to deal with the complaint and I did not make any effort to find out how the Scottish Government was dealing with the complaint or to intervene in how the Scottish Government was dealing with the complaint.'
>
> I would contrast that position with the factual position at paragraphs 20 and 27 above. The First Minister's position on this is simply untrue. She did initially offer to intervene, in the presence of all those at the First Ministers house on 2 April 2018. Moreover, she did engage in following the process of the complaint and indeed reported the status of that process to me personally.

7.11. It is for the Scottish Parliament to decide whether they were in fact misled. Mr Salmond overstates the case when he refers to "the repeated

representation to the Parliament of the meeting on 2 April 2018 as being a ‘party’ meeting”. The Official Reports of the Scottish Parliament for 8, 10 and 17 January 2019 contain no such claim by the First Minister. She did deny that the meetings were Government meetings on the basis that she had no responsibility for operating the Government”s harassment complaints procedure and indeed no knowledge of the complaints except for what Mr Salmond told her. She claims that she confined her role in these meetings to explaining that she could not and would not become involved in the matter. Mr Salmond claims that she agreed to intervene. The fact is that she did not intervene. Mr Salmond has also claimed that her failure to intervene to prevent what he saw as an illegal procedure was also a breach of the Ministerial Code.

7.12. The failure to disclose the meeting of 29 March with Mr Aberdein to the Scottish Parliament on 8 January 2019, although the First Minister’s statement was technically a correct statement of the occasions on which the she had met Mr Salmond nonetheless resulted in an incomplete narrative of events. For the reasons stated above I accept that this omission was the result of a genuine failure of recollection and was not deliberate. That failure did not therefore in my opinion amount to a breach of the Ministerial Code.

8. The meeting of 2 April 2018

8.1. The following facts concerning the meeting of 2 April are not in dispute: the meeting took place in Ms Sturgeon’s home in Glasgow. The meeting took place at Mr Salmond’s request and with the First Minister’s agreement. Present in the house were the First Minister, her Chief of Staff, Ms Lloyd, Mr Salmond, and Mr Aberdein. Mr Duncan Hamilton, a barrister retained on behalf of Mr Salmond was also present; his attendance had not been notified to the First Minister in advance. Mr Peter Murrell, the husband of the First Minister and Chairman of the SNP arrived home while the meeting was still taking place but took no part in it.

8.2. The meeting was in two parts, a discussion between the First Minister and Mr Salmond on their own followed by a meeting at which all five persons were present. The first part of the meeting was in private because

Mr Salmond initially asked to see the First Minister privately. No permanent civil servant was present at any part of the meeting. [redacted] The meeting was a lengthy one; the First Minister estimates between one and two hours; Mr Aberdein describes the first part of the meeting at which only the First Minister and Mr Salmond were present as lengthy.

8.3. The First Minister has stated that at the meeting Mr Salmond told her that complaints against him were being investigated under the Procedure. At that meeting, he showed her a copy of the letter he had received informing him of the complaints. He shared the details of the complaints made against him under the Procedure with her and gave her his response to them.

8.4. Notwithstanding the suspicions she had harboured going into this meeting, the First Minister describes herself as shocked and upset by the reality of what she read. Mr Salmond gave her his reaction to the complaints In the main he denied them, though in relation to one matter he said that he had previously apologised and considered it out of order for it to be raised again, and said that it was his intention to seek a process of mediation between himself and the complainers. It was also clear, contrary to what the First Minister had anticipated, that he did not intend to resign his party membership or do anything to make the matter public at that stage.

8.5. The First Minister states that as it was clear to her then that these were complaints under the Scottish Government's Procedure, she knew that she had no role in the matter and would not be made aware of it by the Permanent Secretary until any investigation concluded. She states that she was clear to Mr Salmond that she would not intervene.

8.6. The First Minister states that she suspected the reason Alex Salmond wanted to see her on April 2 was that he was facing an allegation of sexual misconduct. The principal reason for this was the "lingering suspicion" she had formed following the alleged incident reported by Sky News on 13 November 2017 and referred to in paragraph 9.1. above. She says that her discussion with Mr Aberdein on 29 March 2018 may have contributed to her suspicion.

8.7. In answer to the question why, if she suspected the nature of what Mr Salmond wanted to speak to her about on 2 April, she nevertheless

agreed to the meeting, she states that the reasons were both personal and political. She thought Mr Salmond might be about to resign from the SNP and that, as a result of this or other aspects of how he intended to handle the matter he was dealing with, the party could have been facing a public/media issue that the SNP would require to respond to. As Party Leader, she considered it important that she knew if this was in fact the case in order that she could prepare the party to deal with what would have been a significant issue. As to the personal aspect Mr Salmond has been closer to her than probably any other person outside her family for the previous 30 years, and she was being told he was very upset and wanted to see her personally.

8.8. Although I accept the First Minister's statement that her motivation for agreeing to the meeting was personal and political, and she may have sought to underscore this by hosting it in her private home with no permanent civil servant present and no expenditure of public money, it could not in my opinion be characterised as a party meeting. Members of political parties do not ordinarily attend party meetings accompanied by their lawyers, and when the First Minister's husband, who is chairman of the SNP, arrived home, he did not join the meeting. In fairness the First Minister did not seek to make any case to me that this was a party meeting.

8.9. The First Minister says that she took no action as a result of the meeting. Indeed this appears to be confirmed by Mr Salmond one of whose complaints is precisely that the First Minister failed to take the action he requested. In effect his request was to alter or to override the Government policy and procedure in respect of handling harassment cases which had been agreed in late 2017. It is difficult not to conclude, therefore, that an aspect of the meeting concerned this Government procedure, although of course this was a Government procedure from which the First Minister was excluded by its express terms as a result of the policy adopted in 2017 and she claims that her involvement was only to explain why she could not and would not become involved..

8.10. However, in his submission Mr Salmond strongly argues that the First Minister did in fact agree to intervene in the process to secure a mediation process to resolve the complaints. He claims that she gave an assurance to that effect on 2 April. His account is supported by his advocate, Mr Duncan Hamilton, who states that he has a clear recollection that the First Minister said that "If it comes to it I will intervene". Mr Aberdein did not hear this statement made but he had absented himself from the room at one point and it could have been said in his absence.

8.11. The First Minister, in her written statement, says that she was clear to Mr Salmond that she would not intervene. When appearing before the enquiry in the Scottish Parliament in reply to a question from Mr Stuart McMillan as to why she said to Mr Salmond “I want to assist”, which he took to mean that she would intervene to advocate for mediation in the first instance, she replied:-

> I want to paint a picture—or rather, give people the context. I was sitting in my house. We are talking about 2 April, which was Easter Monday. The man whom I had worked with, been friends with and in my earlier years had looked up to so much had just told me something pretty shocking. My head was spinning and I was dealing with complicated emotions. When you are sitting with a friend who is saying, “I’m facing this terrible situation,” it is entirely possible that you say things like, “I’d love to help if I could”—people say that kind of thing. This was a human situation. We are talking about it now as a political scrutiny situation, which is absolutely proper, but in the moment, it was a human situation between two people who knew each other really well.
>
> As I think that I have described to Andy Wightman, from the minute I saw the letter, I knew that it would not be appropriate for me to intervene. I was probably trying to soften that for him. From his accounts, maybe I softened that too much. In real time, I was also thinking, “Is there anything I have to do? Do I have to report this to anybody?” All of that was going through my head as we were having that discussion. However, I did not intervene because, for the reasons that I set out very vehemently to Margaret Mitchell, I did not think that that would have been appropriate for me to do.

In reply to a question from Alex Cole-Hamilton the First Minister did not deny that she had made the statement attributed to her by Duncan Hamilton:-

> I made clear to him [i.e. Mr Salmond] that I had no role in the process. He could see that himself, because, I think, he had a copy of the process. I think that I made it clear that I would not intervene. Given what he has said and what Duncan Hamilton has said, there is a question about whether, in discussing with him what he thought should happen, I made that clear enough. If Duncan Hamilton says that I said something like that, there is, in a sense, disputed evidence. However, when I look at the things that I am being accused of saying, they do not strike me as being, “Yeah, yeah, I’m going to intervene.” Rather, they are things like, “Well, I’ll help if it is appropriate or if it comes to it”—if it comes to what? I do not know. The permanent secretary has got to tell me. Under the procedure, the permanent secretary would not tell me until the end. It sounds as if I was not actually thinking of intervening. However, if Alex left there with the

> impression that I was, all that I can say is that that, clearly, was not the impression that I wanted to give him.
>
> A crucial part in this is that I did not intervene. It has been put to me today that I should have intervened, but I did not. Whatever way I expressed myself and whatever discussions I took part in, I did not intervene in the process.

As the First Minister has repeatedly, and correctly, stated, she did not intervene. Indeed, her failure to intervene has been a constant source of complaint from Mr Salmond who has even suggested that her failure to do so may itself have been unlawful as contrary to the Scotland Act (see his text message of 3 June referred to in paragraph 10.2 below). If Mr Salmond was entirely confident that he had in fact secured an unequivocal commitment from the First Minister to intervene one might have expected him to follow it up and to press home his advantage. In fact, however, the next communication between the First Minister and Mr Salmond did not occur until three weeks later.

9. The telephone call of 23 April

9.1. The First Minister has stated that after the meeting of 2 April it was not her intention to meet with or speak to Mr Salmond about the matter again. Mr Salmond sent her a message on 22 April with a request to speak to her by telephone. When he did so she again thought it possible that he was intending to respond in a way that would make the matter public. She explains that in her opinion it would have been very much in character for him to have made a bold public declaration about the complaints made against him in order to, as he would see it, 'take control of the story'. This could have been along the lines of 'I'm standing down from the SNP while I fight to clear my name' or even a partial *mea culpa* 'I've made mistakes, but I'm not guilty of what I am accused of'. Back then, this is what she assumed he would eventually do. As Party Leader, she was keen not to be blindsided by such a development, and she explains that is why she agreed to the call.

9.2. The First Minister spoke to Mr Salmond by telephone on 23 April (the substantive call took place early in the evening after a call in the morning had to be aborted due to a poor signal). Her Chief of Staff was in the room with her during this call but not on the line. The First Minister thinks the call lasted around 10 to 15 minutes in total. During the call Mr Salmond

asked her to advise the Permanent Secretary that she knew of the investigation and to persuade the Permanent Secretary to accede to Mr Salmond's request for mediation. She says she told him emphatically that she would not do so. Mr Salmond says that he phoned the First Minister by arrangement on WhatsApp to say that a formal offer of mediation was being made via his solicitor to the Permanent Secretary that day.

9.3. Mr Salmond seems during the course of his discussions with the First Minister to have referred to mediation and arbitration in two distinct contexts. Initially he referred to possible mediation between himself and the complainers. At a later stage he was referring primarily to a possible process of arbitration concerning the issues which finally gave rise to his legal proceedings against the Scottish Government. However, the absence of a provision in the Procedure for mediation between the complainers and a former Minister accused of harassment was always a subject of complaint from him. The First Minister states that she was in any event clear that she would not become involved in making representations so from her point of view that distinction does not seem to have assumed any particular importance.

10. The decision to inform the Permanent Secretary

10.1. Mr Salmond sent a further message to the First Minister on 31 May seeking a further meeting. The First Minister states that she initially resisted this request. She says that she still thought it possible that Mr Salmond might 'go public', but the content of their telephone conversation on 23 April and the tenor of his text messages to her on 31 May and 1 June made her think this was unlikely at that stage. Therefore, her intention was to decline this meeting request. The text messages between them show him wishing to provide her with "material" and that she, without outrightly declining to meet, was finding reasons why a meeting was not convenient, which reasons may well have been perfectly genuine. In a text message on I June the First Minister wrote "I'm not at home at weekend and in Aberdeen on Monday. In any event, I'd prefer a quick chat first to understand the purpose of giving me material. We've already spoken about why I think me intervening is not right thing to do. Happy to talk on what's app at some point over weekend." Mr Salmond describes this as the opposite of the assurance she gave on 2 April.

10.2. On 3 June Mr Salmond sent the following message:-

My recollection of our Monday 2 April meeting was rather different. You wanted to assist but then decided against an intervention to help resolve the position amicably. Now is different. I was intending to give you sight of the petition for JR drafted by senior counsel. You are a lawyer and can judge for yourself the prospects of success which I am advised are excellent. This will follow ANY adverse finding against me by the PS in a process which is unlawful. You are perfectly entitled to intervene if it is brought to your attention that there is a risk of your Government acting unlawfully in a process of which you had no knowledge. Indeed it could be argued that is your obligation under the Scotland Act is to ensure that all government actions are consistent with Convention undertakings

The JR will be rough for me since the hearing will almost certainly be made public but at least I will have the opportunity to clear my name and good prospects of doing so - but for the Government? One further thing to consider. Thus far we have been able to confine evidence offered to the general (and mostly ridiculous) matters. This has had the benefit of keeping everything well clear of current administration. When we go to Court we will have to produce evidence to demonstrate prior process (which incidentally the PS has admitted!).
If you want to discuss privately then I can come to you in the North East on Monday.]

10.3. The First Minister states that the tone and content of this message changed her view of the matter. She explains that the tone of it seemed almost to her intimidatory and the content made clear he was considering legal action. As a result, she decided to inform the Permanent Secretary. The permanent Secretary confirms that she did so on 5 June following up with a letter on 6 June which is set out below.

10.4. The First Minister agreed to meet Mr Salmond and did so on 7 June. There is nothing in the tone of the messages arranging the meeting to indicate her change of opinion, but on the other hand, there was no reason why she would have disclosed this to Mr Salmond in advance of the meeting.

10.5. The First Minister states that her decision to inform the Permanent Secretary was not one she took lightly. Her earlier decision not to inform the Permanent Secretary of her knowledge, which she says had also not been taken lightly, had been intended to protect the integrity and confidentiality of the process.

10.6. The First Minister decided to make it known to Mr Salmond that she had informed the Permanent Secretary, and to make clear again that she would not intervene as he wanted her to. She indicated to the Permanent Secretary in her letter to her that she intended to have such a conversation with him. She states that she felt it important to do this, firstly, because in her opinion Mr Salmond can be persistent and will often interpret conversations or messages in a way that best suit his interests. She wanted to leave no room for misinterpretation. Also, she believed it highly likely that their paths would cross towards the end of that week at the SNP Conference. As it turned out, she thinks he did not attend. She considered that speaking to him in a planned way was better than having him try to 'corner' her in the course of the Conference.

10.7. The text of the First Minister's letter to the Permanent Secretary was as follows:-

> Letter from FM to Permanent Secretary
>
> STRICTLY PRIVATE & CONFIDENTIAL
>
> 6 June 2018
>
> **For the attention of the Permanent Secretary**
> On Monday 2 April I was informed by Alex Salmond that you were investigating a complaint from within the civil service about his conduct while First Minister and that the complaint relates to alleged conduct of a sexual nature.
>
> It was clear, from what he told me, that the complaint was being investigated under the guidance put in place towards the end of last year as part of the Scottish Government's response to the public discussion around sexual harassment cases, and which contained provisions for the handling of any complaints against former Ministers. I recalled and explained that as First Minister I had no role in this process, and that I would be advised of a complaint against a former Minister only when you have concluded your investigation.
>
> The former First Minister (FFM) contacted me again on Monday 23 April to say that he intended to propose mediation.
>
> I told the FFM on both occasions that it would not be appropriate for me to seek to intervene in the process in any way and I did not do so.
>
> [Redacted]

After careful consideration, I decided not to inform you of these approaches as I did not want there to be any suggestion that I was seeking to intervene in the process.

However, I have now had a further approach from the FFM and, given its nature and that it represents a potential challenge to the process, I have decided that I should make you aware of it.

The FFM has told me that he considers the process being followed by the Scottish Government to be unlawful, that he has legal advice to the effect that he would be successful in an application for Judicial Review of the process, and that if any finding is made against him, it is his intention to lodge an application for Judicial Review to seek to have the process declared unlawful.

I want to be very clear that my purpose sending this note is not to ask you to cease the investigation or to influence its course in any way – it is to be transparent with you about my knowledge of a potential challenge to the process. You and I have discussed on many occasions the importance of a zero tolerance approach to sexual harassment within the Scottish Government and the importance to building confidence in such an approach of taking such complaints seriously and ensuring proper investigation. I am clear that the seniority, political affiliation or relationship to me or my government of any person subject to a complaint should have no bearing on how it's handled. To that end, you have my support in taking whatever steps you consider necessary and appropriate to investigate any complaint about inappropriate conduct within the Scottish Government.

It remains my view that it would be inappropriate for us to discuss the substance of the investigation prior to its conclusion.

I intend to inform the FFM that I have told you about his approach to me and to advise him again that it would not be appropriate for me to intervene in the process.

Finally, I am also mindful of the public interest considerations that arise when allegations of this nature are made. At this stage, however, it is my view that the interest of ensuring that the conduct of the investigation is fair to all parties and respects the confidentiality of the complainant(s) is the priority.

NICOLA STURGEON

10.8. I enquired of the Permanent Secretary, Ms Leslie Evans, concerning her actions and involvement in the matters covered by my remit. Her reply includes the following statements:-

You asked for a statement of my actions and involvement in the matters covered by your remit. In providing such a statement, I should make clear from the outset that, as a civil servant, all my actions – including those taken in relation to this matter – are undertaken on behalf of Ministers and in keeping with the Civil Service Code.

I was not aware at the time – nor have I been made aware since - of any attempt by the First Minister to bring any influence to bear on the Scottish Governments's investigation of complaints against Mr Salmond under the Procedure for Handling Harassment Complaints against Current or Former Ministers. At all times, my engagement with the First Minister was in keeping with the respective roles set out for the First Minister and Permanent Secretary in the Procedure. Accordingly, I did not inform the First Minister that formal complaints had been made about Mr Salmond when they were received in January 2018. In line with the Procedure, I did inform the First Minister of the outcome of the investigation at a meeting on 22 August 2018 in her capacity as both First Minister and as Leader of the Party which the former Minister in question, Mr Salmond, had represented.

As I have set out in my response to your specific questions below, the First Minister wrote to me on 6 June 2018, following a discussion on 5 June 2018, informing me of contact that she had had with Mr Salmond. I replied to the First Minister on 7 June 2018 to acknowledge receipt of her letter and to note the information it contained. In addition, I also wrote to the First Minister towards the end of the investigation on 17 August 2018 to inform her I was seeking legal advice on next steps. In addition to these exchanges, the only other communication I recall with the First Minister on this matter was a telephone call sometime in mid-July in which she told me that she had met with Mr Salmond on 14 July 2018 and that he had raised the issue of arbitration with her. She made it clear to me again that she had no role in this matter and that I must reach whatever decision I thought appropriate. Accordingly, my communication with the First Minister on this issue was very limited during the period in which the investigation was in progress.

In line with the Procedure, Mr Salmond had a number of opportunities to contribute to the investigation. I address this further in my answers to your specific questions below.

The intentions that lay behind my actions at all times throughout this period were the need to follow the process set out in the Scottish Government's Procedure for Handling Harassment Complaints against Current or Former Ministers, in line with the Civil Service values of integrity, honesty, objectivity and impartiality. This was especially true in carrying out the responsibilities as Deciding Officer assigned to the Permanent Secretary under the Procedure. At no time did I experience any attempt whatsoever by the First Minister – or anyone acting on behalf of the First Minister – to influence how I undertook that role, or the decisions I came to, either in terms of the process followed or the substance of the matter. Indeed, this point is made explicit in the First Minister's letter to me of 6 June 2018:

(Here the Permanent Secretary quoted from the First Minister's letter set out above).

11. The meeting on 7 June

11.1. This meeting took place in Aberdeen on 7 June 2018. The First Minister says that her Chief of Staff was aware of the meeting but not present though she did interrupt to bring it to an end as the First Minister had other matters to attend to. At the meeting on 7 June, the First Minister says she advised Mr Salmond of the action she had taken and made clear again that she was not prepared to intervene in the process. He wanted to give her a document to take away which she believes was a legal opinion he had obtained. She declined to do so. He stated his intention to take legal action if necessary. She expressed it as her opinion that given the seriousness of the complaints against him he should consider addressing the substance of them. Mr Salmond's description of the meeting does not differ in substance from the First Minister's.

11.2. The First Minister later told the Permanent Secretary of this meeting, but says that they did not have any detailed discussion about it.

12. The meeting on 14 July and telephone conversation of 18 July

12.1. Mr Salmond sent the First Minister a further message on 5 July 2018. She did not respond to this message.The message is interesting in explaining Mr Salmond's view of arbitration and how he sought to persuade the First Minister of what he saw as its advantages for the Scottish Government. I quote the relevant part of the message:-

> Nicola. I have slept on the content of the latest letter from the PS rejecting arbitration. Two points I want to make to you privately. Firstly, the explanation given in the letter is that arbitration is rejected because the SG is confident in the legality of the process. With respect, that entirely misses

> the point. The SG may well believe it is lawful. My Senior Counsel believes it is unlawful. That's the whole point of the arbitration.
>
> The legality will have to be resolved either in private (in a confidential and binding arbitration) or in public at the Court of Session. The SG, and you, have everything to gain from arbitration. If my legal advice is wrong, I will accept that and the current process proceeds. If the SG legal advice is wrong, you discover that without losing in a public court. Adopting an arbitration process also guarantees confidentiality for the complainers, regardless of what happens.

12.2. The next contact between Mr Salmond and the First Minister was on 13 July 2018, as a result of a message sent to Mr Salmond on WhatsApp saying the First Minister wanted to meet him, which led to their third and final meeting being arranged for 14 July at her home. The First Minister states that by the time of the meeting on 14 July, she was again concerned that the matter might become public. She says that she always thought it possible, even likely, that this was the course Mr Salmond would ultimately take. Were he to take legal action, which she now knew he was considering, this could also put matters into the public domain. She was again anxious - as Party Leader and from the perspective of preparing the SNP for any potential public issue - to know whether his handling of the matter meant it was likely to become public in the near future.

12.3. At that meeting, he told the First Minister he was asking the Scottish Government to agree a process of arbitration. For reasons that she says she did not understand then, and does not understand now, he believed she was blocking this. She told him that was not so as she had no involvement in the complaint process. She says that she suggested again that he should address the substance of the complaints rather than simply focusing on procedure. Although he indicated he would reflect on this, the First Minister believed that he was focused on his request for arbitration and seemed unwilling to accept that she would not put pressure on the Permanent Secretary to accede to it. However, she did tell the Permanent Secretary on 16 July that in relation to arbitration she (the Permanent Secretary) should "reach whatever decision [she] thought appropriate" (see paragraph 10.8 above and Paragraph 12.6 below). In this respect the First Minister indicated her neutrality on the issue, contrary to Mr Salmond's belief that she expressed her opposition to arbitration.

12.4. Mr Salmond sent the First Minister further messages on 15 and 16 July 2018. The First Minister states that the message of 15 July is Mr

Salmond's interpretation of her saying that she was not involved in the decision. I quote:-

> Many thanks for making the time yesterday. I am grateful that you will correct the impression being given that you are against arbitration or that it is somehow against your interests. I know that you need to reflect further on how to progress things beyond that and am not blind to the difficulty of legal advice being suspicious of arbitration. I am genuinely at a loss as to what the downside is for anyone, complainers, SG or me or you. The reasons given to date have been meaningless or more recently just a misrepresentation of your position. If there are good legal reasons then surely they can be set out for you/us. I will wait to hear how you are able to proceed. I am also giving much thought to your advice and thinking deeply about how arbitration on process might open up the space and opportunity to address and resolve the underlying matters, as far as is possible, to everyone's satisfaction.

12.5. By this time, it was clear to the First Minister that her relationship with Mr Salmond was breaking down. In her opinion he was clearly upset and angry that she was not assisting him to achieve the outcome he wanted. The First Minister states that she was also upset with him. She says that the nature of the complaints against him and the account he had given her of one of them had badly shaken her faith in him. She states, however, that in spite of that she did not want their relationship to break down completely. He had been her friend and colleague for 30 years.

12.6. The First Minister advised the Permanent Secretary on 16 July of her meeting with Mr Salmond on 14 July and made the Permanent Secretary aware of his belief that she was blocking arbitration. The First Minister made clear to the Permanent Secretary again that she had no view on the matter and the decision was for the Permanent Secretary alone. Given the risk of legal action, she says she did not want any suggestion that an opinion attributed to her, which she had not expressed, was influencing decisions she had no part in. She reiterated to the Permanent Secretary that she must reach whatever decisions she considered appropriate and that she, the First Minister, did not seek to influence her in any way. The First Minister also told her - she thinks it was on the First Minister's return from annual leave - that she had spoken to Mr Salmond on the phone on 18 July, but she says that did not discuss the details of that conversation.

12.7. The First Minister says that it was her wish to avoid her relationship with Mr Salmond from breaking down completely that prompted her

telephone call to him on 18 July. She wanted to draw a line under their contact about the matter. She was also about to take a two day summer break and she did not want it interrupted by contact from him. However, she thinks she was also hoping to make him understand and accept why she could not and would not intervene.

12.8. Mr Salmond's account of this 18 July telephone call is that the First Minister phoned him at 13.05 to say that arbitration had been rejected and suggested that this was on the advice of the Law Officers. She urged him to submit a substantive rebuttal of the specific complaints against him, suggested that the general complaints already answered were of little consequence and would be dismissed, and then assured him that his submission would be judged fairly. She told him he would receive a letter from the Permanent Secretary offering him further time to submit such a rebuttal which duly arrived later that day. Mr Salmond says that as it turned out the rebuttal once submitted was given only cursory examination by the Investigating Officer in the course of a single day and that she had already submitted her final report to the Permanent Secretary. Mr Salmond's view is now that it was believed that his submission of a rebuttal would weaken the case for Judicial Review (his involvement in rebutting the substance of the complaints being seen to cure the procedural unfairness) and that the First Ministers phone call of 18 July 2018 and the Permanent Secretary's letter of the same date suggesting that it was in his "interests" to submit a substantive response was designed to achieve that.

12.9. Later on 18 July, Mr Salmond sent the First Minister a copy of a letter he had received from the Scottish Government. She did not respond to this message. He sent her a further message on 20 July 2018. Again, she did not respond. She has had no contact with Mr Salmond since.

13. The Procedure for handling complaints against Ministers and former Ministers and Mr Salmond's objections to it

13.1. As already mentioned in Chapter 2 above, in December 2017 the Scottish Government adopted the Procedure. Its full and formal title is "Handling of harassment complaints involving current or former ministers" and it is described as an "internal procedure agreed in December 2017 and published in February 2018 on the Scottish Government intranet". Since 23 August 2018 it is also published on the Scottish Government's website at https://www.gov.scot/publications/handling-of-harassment-complaints-involving-current-or-former-ministers/. The manner in which the Procedure is intended to operate are set out in Chapter 3 above.

13.2. As pointed out in Chapter 3 the Procedure not only does not envisage the notification of complaints made against former Ministers to the First Minister prior to the completion of the investigation but is designed to preclude her from having any role in the process. The purpose of this provision is clearly to avoid either the reality or the appearance of political interference with the process of an investigation and to ensure the impartiality of investigations. In my opinion this is a legitimate objective of the scheme,

13.3. So far as concerns the limitations on the First Minister's involvement in the Procedure in my opinion the principle of excluding any role for politicians in the resolution of complaints of harassment of public servants is not only a legitimate one but there is a strong case for maintaining it. It is appreciated that Mr Salmond and no doubt others do not share this view. Mr Salmond made a forceful case to the effect that the Minister may intervene in the Procedure in his submission to me which I discuss below at paragraph 13.7.

13.4. In the event the Government accepted that the process of investigation in the case of the complaints made against Mr Salmond was flawed because of contact between the person who was appointed as investigating officer and the complainants both before and at the time their complaints were formally made. It is not part of my remit to examine how or why that happened or whether matters might have been handled differently except insofar as it is alleged that certain aspects of the conduct of the Government's defence to Mr Salmond's legal proceedings in themselves constituted a breach of the Ministerial Code. This aspect of the matter is dealt with in Chapter 14 below. I have, however, been asked in the remit "to consider and offer views on whether the Ministerial Code might need revision to reflect the terms of the Procedure and the strict limitations it places on the involvement of the First Minister in cases which fall to be considered under the Procedure." I am not asked in my remit to comment on whether the Procedure itself may require revision in the light

of experience and it is not part of the function of the independent advisers on the Ministerial Code.

13.5. It is of course important to learn what lessons there are from the experience gained in dealing with the complaint against Mr Salmond. In his judicial review proceedings he raised a substantial number of complaints about the procedures applied in his case apart from the issue conceded by the Government. In his submission to me he has repeated his view that there are serious deficiencies in the Procedure and has identified a number of them, including the absence of a mediation procedure in the case of complaints against former Ministers as well as the more fundamental question of how a non-statutory and non-contractual scheme could bind a former Minister who had already left office when the Procedure was introduced. It seems to me that a report on the question whether there have been breaches of the Ministerial Code is not the place to provide that answer. Since Mr Salmond's judicial review proceedings were conceded by the Scottish Government on one of the grounds argued there is no court decision on the merits of the various other legal grounds advanced in Mr Salmond's proceedings. It may be necessary, therefore, to examine each and every one of these issues with a view to deciding what, if any, amendments to the Procedure may be required in the light of this experience. In particular in my opinion the question of whether a relatively informal resolution procedure is appropriate at all and offers proper guarantees for the rights of all parties where the facts alleged in a complaint may also, if proved, amount to serious criminal conduct, is a matter which should receive further consideration.

13.6. I understand a process of review is underway by Ms Laura Dunlop QC. This is a more appropriate forum in which to deal with these questions. Ultimately the question of whether there are legal deficiencies in the Procedure which need to be addressed is one for the Scottish Law Officers.

13.7. Mr Salmond in his submission to me, having expressed his concern about the terms of the remit of this enquiry, among other matters stated the following:

> 4. …The reason for my concern is that the remit drawn up for Mr Hamilton focuses on whether the First Minister intervened in a civil service process. As I have pointed out to Mr Hamilton, I know of no provisions in the Ministerial Code which makes it improper for a First Minister to so intervene.

> 5. To the contrary, intervention by the First Minister in an apparently unlawful process (subsequently confirmed by the Court of Session) would not constitute a breach precisely because the First Minister is under a duty in clause 2.30 of the Ministerial Code to avoid such illegality on the part of the Government she leads.
>
> 6. Further, to suggest intervention was a breach would be to ignore and contradict the express reliance of the procedure on the position of the First Minister as the leader of the party to which the former minister was a member in order to administer some unspecified sanction.

13.8. It is certainly correct that there is nothing in the Ministerial Code which expressly prevents the First Minister from involving herself in any process of government. However, the procedures to be followed in an internal Scottish Government enquiry into allegations of harassment were set out in the Procedure which had been adopted and agreed by the Scottish Government including the First Minister as recently as fourteen months previously. While that Procedure had not been enacted into law, and it might therefore be argued that the Scottish Government could have revoked or overridden it, it could hardly be argued that the First Minister would have had any power unilaterally to do so. The Ministerial Code lays a major emphasis on the principle of collective cabinet responsibility which is as binding on the First Minister as on her ministerial colleagues.

13.9. Even had such a unilateral move by the First Minister been possible it would undoubtedly have been seen as a partisan and political interference in a process which was then underway, and as an interference of a nature which the Procedure was expressly designed to prevent. What is more the complainants had undoubtedly acted in the expectation that their complaints would be dealt with in accordance with the terms of the Procedure. What answer could have been made if these complainants in their turn had sought a judicial review of an attempt to overturn a process which was already underway? Such a U-turn would certainly have been both legally and politically impossible even had the First Minister wished to make it, which clearly she did not. One can only imagine the political reaction had the First Minister attempted to override a system expressly designed to deal with harassment complaints against former Ministers on the first occasion when it was used for this purpose. To have adopted a harassment Procedure after extensive consultation, and then to have altered it following a confidential arbitration process, as Mr Salmond was proposing, at a time when significant complaints against a former First Minister were actually under investigation, would undoubtedly have undermined public confidence in the processes of

government to a much greater extent than in fact eventually happened as a result of Mr Salmond's successful judicial review.

13.10. Furthermore, to suggest that the First Minister not only could but should have intervened unilaterally to protect legality is to ignore the role of the Law Officers both under the Scotland Act and in the terms of the Ministerial Code. Paragraph 2.30 of the Code, having stated the overarching duty on Ministers to comply with the law goes on to state that it is part of the role of the Law Officers to ensure that the Government acts lawfully at all times.

13.11. It might be argued that a distinction could be drawn between an involvement in the Procedure to override the Permanent Secretary's decision as distinct from a possible involvement to insist on settling the litigation intended and subsequently in fact brought by Mr Salmond by agreeing to his demands for arbitration. In my opinion such a distinction would be wholly artificial. The First Minister acted in accordance with the spirit as well as the letter of the Procedure in declining to involve herself in questions concerning Mr Salmond's intended or actual litigation. The Procedure was one which the legal advisers to Scottish Government had been involved in drawing up. The services of the Scottish Law Officers, who under the Scotland Act 1998 are responsible for the provision of legal advice to Scottish Government, were at all times available to the First Minister and Scottish Government when the Procedure was being devised and to the Permanent Secretary when Mr Salmond's judicial review was being defended. Even on the assumption that the Law Officers got it wrong it does not follow that the First Minister was in breach of the Ministerial Code in failing to take Mr Salmond's advice.

13.12. I do not, therefore, accept that the First Minister's decision to follow the terms of the Procedure and not to seek to avoid or amend it during the course of an ongoing investigation amounted to a breach of the Ministerial Code. In my opinion for the reasons stated in the preceding paragraphs Mr Salmond's submissions in this regard are misconceived.

14. The Handling of Mr Salmond's Judicial Review Proceedings and the Ministerial Code

14.1. Mr Salmond has raised a further matter which he says constitutes a breach of the Ministerial Code. He refers to the manner in which the Scottish Government attempted to defend his petition for judicial review in which he challenged the legality of the Procedure and its application in his case.

14.2. As is now well known the Scottish Government's defence of the petition was a saga of failures to disclose relevant evidence. The key documents relevant to the Government's defence have been, rather belatedly, published by the Scottish Government on its website and can be accessed at https://www.gov.scot/publications/legal-advice-related-to-the-parliamentary-inquiry-into-the-scottish-governments-handling-of-harassment-complaints-sghhc/.

14.3. I do not propose to set out here a full chronology of what happened. The key problem was that the Investigating Officer in charge of investigating the complaints against Mr Salmond had had prior contact with the complainers before the complaints were formally made. However, the Procedure Stated that the IO "will have had no prior involvement with any aspect of the matter being raised." Unfortunately the full extent of the prior involvement was not revealed all at once and the details of that involvement emerged in instalments. The impact of this can be gauged from counsel's response at different stages- "a very real problem indeed" and "extremely concerning" on 31 October, the Petition "more likely than not to succeed" on 6 December. On that date counsel advised

> 29 The question that will justifiably now be asked is where this takes us. There are only two options.
>
> 30 One is to concede the Petition and, if so advised, return to square one. We have no doubt whatsoever that this is not an attractive option: it would require the conceding of (doubtless substantial) expenses, and would be trumpeted everywhere by the petitioner.
>
> 31 The other is simply to press on regardless. That is, in many ways, even less attractive: the expenses will be far higher, and the trumpeting far louder, if the case proceeds to a written judgment. Moreover, and potentially of more concern, is the real prospect of damaging criticism from Lord Pentland. He is not a judge known to pull his punches, and we are both concerned at the possibility of criticism, both from the bench in the course of the hearing and in any written judgment, which would not reflect well on the respondents.
>
> 32 Ultimately, our own view is that the "least worst" option would be to concede the Petition. We understand how unpalatable that advice will be,

> and we do not tender it lightly. But we cannot let the respondents sail forth into January's hearing without the now very real risks of doing so being crystal clear to all concerned.

14.4. In an email of 11 December from an unknown Government source it is stated that the Lord Advocate "was indeed clear about no question of conceding, with a stress on the benefit that would accrue from a judicial finding (a) that it was right to have a procedure in such circumstances and (b) it was right to have this procedure, even if there is a risk - which we all know and understand - that he may be forced to hold that there were faults in the way it was applied in the particular case". In another email of the same date from an unknown Government source it is stated that the Lord Advocate and the Solicitor General were "very clear that no question or need to drop the case. LA clear that even if prospects are not certain it is important that our case is heard. Senior Counsel made clear that his note was not intended to convey that he didn't think we had a stateable case…"

14.5. On 17 December Counsel's pessimism had deepened. The following extracts from a joint advice of Senior and Junior Counsel of that date they state:-

> 1 We have drafted this note for the eyes of the Lord Advocate and Paul Cackette only.
>
> 2 It has been prepared in response to a series of events in the week of 10 December 2018 which led us to consider very seriously whether we were bound to withdraw from acting for the respondents in this matter. Having given the question anxious consideration we concluded that we would be entitled to so withdraw but at this stage are not bound to do so.
>
> 3 We introduce matters in this way to convey the seriousness of matters from our perspective.
>
> 31. It has become increasingly clear that the approach of the petitioner in this matter is one which may appropriately be described as a "scorched earth" one. It is clear that there is no concern on his part as to who might be criticised, or harmed, as a result of these proceedings. We understand that this is well understood by those "in the crosshairs" – most obviously the Permanent Secretary and the First Minister. If instructions are to proceed notwithstanding then so be it – we are not in a position where we are professionally unable to mount a defence (because, for example, there is no statable defence). We are, however, perilously close to such a situation. We are firmly of the view that at least one of the challenges mounted by the petitioner will be successful. We are told that there are other aspects to the case which justify the running of the defence and that, accordingly, there is

no prospect of the petition being conceded. That decision is not for us to take and as long as informed consent is given the decision to proceed is one which we must obey. We are, however, entirely unconvinced as to what benefit that might arise from the hearing in January that might outweigh the potentially disastrous repercussions thereof. Leaving aside the large expenses bill that would inevitably arise, the personal and political fallout of an adverse decision – especially if, as may be the case, it is attended by judicial criticism – seems to us to be something which eclipses by some way the possibility of helpful judicial comments. That being so, and recognising as we do that the wider political picture is something that others are far better than are we to comment upon, we cannot let pass uncritically the suggestion that the petition cannot be conceded. It would be possible simply to accept (as is our genuine advice as a matter of law) that the appointment of JM as Investigating Officer was, whilst made in bona fide, on reflection indefensible. That would render nugatory all of the other, potentially more harmful, aspects to the challenge. Accepting that a technical error was made could not sensibly be criticised. This would protect those that might otherwise be harmed by the vigorous nature of the challenge that is to be mounted. It would stem the substantial expenses bill that we have no doubt is presently being incurred. Given that we genuinely cannot see the defence prevailing in any event, that seems to us to be the only sensible approach.

32 We are acutely aware that much of this has already been said, and discounted. The decision to proceed has been taken by very experienced legal and political minds, who are entitled to proceed as they wish. However, we are – independently but also mutually – unable to see that the benefits in proceeding come close to meeting the potential detriments in so doing. Given the potential for harm we simply wish all concerned – and we include the First Minister in this – to be absolutely certain that they wish us to plough on regardless notwithstanding the concerns which we have outlined

14.6. On 19 December matters had deteriorated further. The following is from a joint note from counsel:

1 We write further to recent events. With regret, our dismay at this case deepens yet further.

2 We will not rehearse the regrettable way in which document disclosure has unfolded. Suffice to say that we have each experienced extreme professional embarrassment as a result of assurances which we have given, both to our opponents and to the court, which assurances have been

given on instructions, turning out to be false as a result of the revelation of further documents, highly relevant yet undisclosed. We, of course, required to consult at 9.15pm last night to discuss the ramifications thereof.

3 This morning, the first part of the commission began. The inevitable result of the last minute disclosure of the additional documents was that the commission required to be adjourned. The havers now cited for Friday can expect a torrid time in the witness box given the late disclosures. That comment applies in particular to the IO, for the reasons which follow.

4 All of that is bad enough. However, it pales beside the revelation in the course of this morning of two further documents. These give rise to the same two concerns discussed in the consultation last night: (i) the late nature of their revelation; and (ii) their content. Each document comes from the IO.

5 As to the late nature of the revelation, this is unexplained, and frankly inexplicable. Given the nature of the searches described by as having been undertaken, we regret that we simply cannot understand why these documents have been made available only now

14.7. There followed what was described as a “watershed moment” on 21 December. The Investigating Officer in the case gave evidence on oath in the commission that in relation to a meeting between her and a complainer immediately before the complaint was made she could not remember that meeting As counsel pointed out, this meant that the Government could not aver, much less prove, what happened at the meeting, and thus unable to rebut the rather obvious inferences that might be drawn from the fact that the meeting happened. Following this the Scottish Government decided to throw in the towel.

14.8. There is undoubtedly scope for political criticism of the manner in which Scottish Government handled Mr Salmond’s proceedings. That is not a matter for me to express any view upon. However, Mr Salmond argues that the manner in which the case was handled amounts to a breach of “the overarching duty on Ministers to comply with the law” stated in paragraph 2.30 of the Ministerial Code.

14.9. There are undoubtedly ways in which the handling of court proceedings could involve illegality. Perjury is a serious offence, and the tendering of evidence known or believed to be perjured would be a grave matter, as would the use of forged documents in legal proceedings. Malicious prosecution is both a tort and a crime. Conspiracy to pervert the course of justice is also a serious offence. It is also essential that judges

can trust counsel and solicitors who appear before them and therefore very high standards are expected in respect of their duty of candour and not to mislead the court. Instructions to act in breach of these duties would therefore be a serious matter.

14.10. I cannot see that any of these issues arose in this case. On several occasions counsel made clear their disagreement with decisions that were made but in each case accepted that the final say rested with the Law Officers. There is no doubt from the whole manner and tone of counsel's advices that they would, quite properly, have declined to accept any instructions which were improper.

14.11. Mr Salmond appears to be under the misapprehension that the Government is under a duty to withdraw a case if advised that there is less than an evens chance of winning. There is no such rule and the prediction of the outcome of cases is not an exact science.

14.12. There is in my opinion no evidence whatsoever that the First Minister acted improperly or in breach of the Ministerial Code with respect to Mr Salmond's petition. The evidence suggests that the key legal decisions were taken by the Law Officers. Having regard to the duty of the Law Officers to ensure that the Government acts lawfully at all times, and having regard to the position of the Lord Advocate under the Scotland Act (he cannot be removed from his position by the First Minister without the consent of the Sottish Parliament) I think the First Minister was fully entitled to rely on his legal advice.

15. The Ministerial Code: Contacts with External Individuals and Organisations, including Outside Interest Groups and Lobbyists

15.1. Sections 4.22 and 4.23 of the Ministerial Code provide as follows:-

> 4.22 Ministers meet many people and organisations and consider a wide range of views as part of the formulation of Government policy. Meetings on official business should normally be arranged through Private Offices. A private secretary or official should be present for all discussions relating to Government business. Private Offices should arrange for the basic facts of formal meetings between Ministers and outside interest groups to be recorded, setting out the reasons for the meeting, the names of those attending and the interests represented. A monthly list of engagements carried out by all Ministers is published three months in arrears.
>
> 4.23 If Ministers meet external organisations or individuals and find themselves discussing official business without an official present – for example at a party conference, social occasion or on holiday – any significant content (such as substantive issues relating to Government decisions or contracts) should be passed back to their Private Offices as soon as possible after the event, who should arrange for the basic facts of such meetings to be recorded in accordance with paragraph 4.22 above.

15.2. It seems to have been generally assumed, even in the terms of the remit itself, that section 4.22 of the Ministerial Code applied to the meetings between the First Minister and Mr Salmond. I begin by saying that I do not accept that these meetings can be considered as SNP party meetings for the reasons stated in paragraph 9.8 of this report in which I discuss the character of the meeting of 2 April. The First Minister has accepted that before that first meeting with Mr Salmond she suspected the reason Alex Salmond wanted to see her on April 2 was that he was facing an allegation of sexual misconduct. As already explained I accept her statement that her motives for agreeing to the meeting were partly political and partly personal.

15.3. From the first sentence of paragraph 4.22 of the Code it is clear that the primary, and possibly the sole purpose of this provision is to deal with meetings with people and organisations which are held or can be considered "as part of the formulation of Government policy." This is reinforced by the subsequent requirement in the paragraph "for the basic facts of formal meetings between Ministers and outside interest groups to be recorded, setting out the reasons for the meeting, the names of those attending and the interests represented." Paragraph 4.23 then extends the provision to deal with the situation where informal meetings or discussions take place but again this is qualified by confining it to discussions containing "any significant content (such as substantive issues relating to Government decisions or contracts)". Ministers must

have numerous contacts every day which are not required to be recorded under this provision. The other highly significant aspect of this provision is that it applies only to "contacts with *external* individuals and organisations, including *outside* interest groups and lobbyists." (Emphasis added).

15.4. We know what the discussions were about. They concerned a governmental process for dealing with harassment complaints against Scottish Government Ministers, former Ministers and officials generally known as "the Procedure". As already stated Its full and formal title is "Handling of harassment complaints involving current or former ministers" and it is described as an "internal procedure agreed in December 2017 and published in February 2018 on the Scottish Government intranet". Since 23 August 2018 it is also published on the Scottish Government's website at https://www.gov.scot/publications/handling-of-harassment-complaints-involving-current-or-former-ministers/.

15.5. Note that the procedure is clearly described as an internal procedure. It did not apply to anybody who did not and never had worked for Scottish Government. Indeed it was precisely the claim made by Scottish Government to have jurisdiction over harassment carried out by former Ministers during their time in office which formed a major bone of contention between Mr Salmond and the Scottish Government. In my opinion any person who was being proceeded against under the Procedure, or for that matter was making a complaint under its provisions, was entitled to raise an issue without the matter being recorded under these provisions of the Code. I fully accept the logic of the First Minister's position that it would have been impossible to record such meetings or discussions without a risk of prejudicing the proceedings or interfering with their confidentiality.

15.6. In my opinion, therefore, neither the letter nor the spirit of paragraphs 4.22 and 4.23 of the Ministerial Code applied to the discussions between the First Minister and Mr Salmond. Consequently I do not consider that the First Minister acted in breach of the Code in not disclosing them prior to 5 June.

16. The alleged leak to the Daily Record

16.1. Mr Salmond has asked for an investigation into whether an alleged criminal leak of part of the contents of the Permanent Secretary's Decision report to the Daily Record was sourced from the First Minister's Office.

16.2. It is no part of my function and I have no power to investigate criminal offences. If Mr Salmond has evidence it is a matter for the police.

17. Conclusions

17.1. I have considered the following issues which were alleged to amount to a breach of the Ministerial Code by the First Minister:-

1. The allegation that her failure to record her meetings with and telephone discussions with Mr Salmond and others on 29 March, 2 and 23 April, 7 June and 14 and 18 July 2018 amounted to a breach of paragraphs 4.22 and 4.23 of the Ministerial Code.

2. The allegation that the First Minister may have attempted to influence the conduct of the investigation then being undertaken by the Permanent

Secretary into allegations made against Mr Salmond under the Procedure for Handling of Harassment Complaints involving Current or Former Ministers ("the Procedure").

3. The allegation that the First Minister misled the Scottish Parliament in relation to her meetings as specified in paragraph 1 above.

4. The allegation that the First Minister was in breach of her duty to comply with the law in respect of the Scottish Government's response to the petition of Mr Salmond (cite correct title of petition).

17.2. For the reasons set out in detail above in this Report I am of the opinion that The First Minister did not breach the provisions of the Ministerial Code in respect of any of these matters.

James Hamilton

12 March 2021